



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2016

Mr. Kirk Swinney
Counsel for McLennan County Appraisal District
McCreary, Veselka, Bragg & Allen, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78665

OR2016-01700

Dear Mr. Swinney:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 595095.

The McLennan County Appraisal District (the "district"), which you represent, received a request for all appraisal review board evidence pertaining to a specified address during a specified time period. You state you will release some information. You also state you do not have some of the requested information.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.155 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we understand the district contends a portion of the submitted information may not be responsive to the present request for information. The instant request is for all appraisal review board evidence pertaining to a specified address during a specified time period. We note a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, you state the information consists of evidence the district prepared to present at an appraisal board hearing. Further, you have submitted the information as responsive to the request and made arguments against its disclosure. Thus, we assume the district has

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

made a good-faith effort to relate the request to information within its possession or control. Accordingly, we will address your arguments against disclosure of this information.

Next, you state you will redact a telephone number within Exhibit B. We note a governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically authorizes the governmental body to do so. *See* Gov't Code § 552.301(a); *see also, e.g., id.* §§ 552.024(c), .147; Open Records Decision No. 673 (2001) (previous determinations). We are unaware of any statutory or other authority that would permit the district to withhold the telephone number at issue without asking this office for a decision. Therefore, the district may not redact the telephone number at issue without asking this office for a ruling under section 552.301 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 22.27 of the Tax Code, which provides:

(a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

...

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information[.]

Tax Code § 22.27(a), (b)(2). We understand the district is an “appraisal office” for purposes of section 22.27(a). You state certain information pertaining to sales prices was obtained by

the district under a promise of confidentiality. However, you do not explain whether the information you have indicated in Exhibits C, H, I, and J was provided by the property owner of the property at issue in connection with an appraisal for purposes of section 22.27(a) of the Tax Code. Thus, we must rule conditionally. To the extent the information at issue was not provided by the property owner in connection with an appraisal, the information at issue is not confidential under section 22.27(a) of the Tax Code and may not be withheld under section 552.101 of the Government Code on that basis. To the extent the information at issue was provided by the property owner in connection with an appraisal, the district must generally withhold such information under section 552.101 in conjunction with section 22.27(a). In this instance, however, the requestor is the owner of the property at issue. Thus, the requestor has a right of access under section 22.27(b)(2) to the information pertaining to this property that would otherwise be confidential under section 22.27(a). *See id.* § 22.27(b)(2). Accordingly, the district may not withhold from this requestor the information at issue under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

Section 552.155 of the Government Code provides, in relevant part, as follows:

- (a) Except as provided by Subsection (b) or (c), a photograph that is taken by the chief appraiser of an appraisal district or the chief appraiser's authorized representative for property tax appraisal purposes and that shows the interior of an improvement to property is confidential and excepted from the requirements of Section 552.021.
- (b) A governmental body shall disclose a photograph described by Subsection (a) to a requestor who had an ownership interest in the improvement to property shown in the photograph on the date the photograph was taken.

Gov't Code § 552.155(a)-(b). You state Exhibit F consists of photographs of the interior of the subject property; however, you do not explain whether the photographs were taken of an improvement to the property by the chief appraiser of an appraisal district or the chief appraiser's authorized representative for property tax appraisal purposes. Thus, we rule conditionally. To the extent the photographs were not taken of an improvement to the property by the chief appraiser of an appraisal district or the chief appraiser's authorized representative for property tax appraisal purposes, they are not subject to section 552.155 and the district may not withhold Exhibit F on that basis. To the extent the photographs were taken of an improvement to the property by the chief appraiser of an appraisal district or the chief appraiser's authorized representative for property tax appraisal purposes, we find section 552.155 is applicable and the district must generally withhold Exhibit F on that basis. You state the photographs at issue were taken at a time when the requestor did not have an ownership interest in the property at issue; thus, you assert section 552.155(b) does not apply. However, in this instance, you provided documentation demonstrating the individual who owned the property on the date the photographs in Exhibit F were taken provided the district with written authorization for the requestor to obtain information used to determine the value of the property. You explain Exhibit F was prepared by the district as evidence to present

at a protest hearing before the appraisal review board regarding the value of the property at issue. Thus, we find the requestor has a right of access to Exhibit F under section 552.155(b) as the authorized representative of the owner of the property on the date the photographs were taken. As no other exceptions to disclosure have been raised, the submitted information must be released.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 595095

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released in this instance includes information that may be confidential with respect to the general public. See Gov't Code § 552.155(b); Tax Code § 22.27(b)(2). Therefore, if the district receives another request for this information from an individual other than this requestor, the district must again seek a ruling from this office.