



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 3, 2016

Ms. Elizabeth Conry Davidson
Counsel for the Bexar Appraisal District
Attorney at Law
926 Chulie Drive
San Antonio, Texas 78216

OR2016-22183

Dear Ms. Davidson:

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# 628803.

The Bexar Appraisal District (the "district"), which you represent, received a request for information presented at the hearings for two specified accounts. You state the district is releasing some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.149 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor argues the district may not withhold the requested information because it was presented at an open hearing before the Bexar County Appraisal Review Board (the "board") pursuant to section 41.66(d) of the Tax Code. Section 41.66(d) of the Tax Code states, "Except as provided by Subsection (d-1), hearings conducted as provided by this chapter are open to the public." Tax Code § 41.66(d). Section 41.66 further states, in pertinent part,

(d-1) Notwithstanding Chapter 551, Government Code, the appraisal review board shall conduct a hearing that is closed to the public if the property owner

or the chief appraiser intends to disclose proprietary or confidential information at the hearing that will assist the review board in determining the protest. The review board may hold a closed hearing under this subsection only on a joint motion by the property owner and the chief appraiser.

Id. § 41.66 (d-1) (footnote omitted). We note section 41.66 applies only to appraisal review boards and not to appraisal districts. *See id.* § 41.66. Pursuant to section 552.303 of the Government Code, this office asked you to provide additional information regarding (1) whether the request was received by the district or the board, (2) whether the district or the board maintains the responsive information, (3) whether the hearings at issue were conducted as provided by chapter 41 of the Tax Code, and (4) whether the hearings were conducted as closed hearings pursuant to subsection 41.66(d-1) or as open hearings pursuant to subsection 41.66(d). *See Gov't Code* § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render decision). In your response to this office, you state the request for information was received by the district and you inform us the responsive information is maintained by the district. However, in his comments to this office, the requestor states his request was submitted to the board and seeks information maintained by the board. Further, upon review, we note the request is addressed to the board. Accordingly, on the basis of our review of your representations and those of the requestor, and of our review of the submitted documents, we rule in the alternative.

We note the district informs us the hearings at issue were conducted as open hearings pursuant to section 41.66(d) of the Tax Code. As noted above, section 41.66 applies only to appraisal review boards, and not to appraisal districts. *See Tax Code* § 41.66. Thus, to the extent the requestor seeks information from the board that is maintained by the board, the information is public and must be released because it was produced at an open hearing rather than a closed hearing. *See id.* § 41.66(d-1), (d-2). However, to the extent the request for information was submitted to the district and the information at issue is maintained by the district, the information is not subject to section 41.66, and we will consider the district's arguments against its disclosure.

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 states in pertinent part:

(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.

Id. § 22.27(a). The district argues the submitted information is confidential under section 22.27(a). You state the district is an appraisal office for purposes of section 22.27. You state the submitted information “consists of documents generated using information obtained from property owners under a promise of confidentiality.” You do not indicate any of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b). However, you do not inform us which portions of the information at issue were provided by property owners. Thus, we must rule conditionally. To the extent any of the submitted information was provided by property owners in connection with an appraisal, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. However, to the extent any of the submitted information was not provided by property owners in connection with an appraisal, the information is not confidential under section 22.27(a) of the Tax Code and the district may not withhold it under section 552.101 of the Government Code on that basis.

The district also claims section 552.149 of the Government Code for any remaining information. Section 552.149 provides, in relevant part:

(a) Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of [the Act].

(b) Notwithstanding Subsection (a), the property owner or the owner’s agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461(a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner’s protest[.]

Gov’t Code § 552.149(a)-(b). Subsections 552.149(a) and (b) are limited to those counties having a population of 50,000 or more. *Id.* § 552.149(e). We note Bexar County has a population of 50,000 or more. You state any remaining information “includes documents

containing information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity.” Therefore, we find to the extent any remaining information relates to real property sales prices, descriptions, characteristics, and other related information that was provided to the district by private entities, it is generally confidential under section 552.149(a) of the Government Code. Conversely, to the extent the remaining information does not relate to real property sales prices, descriptions, characteristics, and other related information or was not provided to the district by private entities, it is not confidential under section 552.149(a) and it may not be withheld on that basis.

However, pursuant to section 552.149(b) of the Government Code, a property owner or the owner’s designated agent has a right of access to certain information that is confidential under section 552.149(a). As noted above, the information at issue was produced at hearings on protests related to the specified accounts. However, you state the hearings were concluded when the requestor submitted the request for information. Thus, you inform us the requestor is not a party to any pending protest and does not have a right of access to any of the information under section 552.149(b). Upon review and based on your representations, we find to the extent any remaining information relates to real property sales prices, descriptions, characteristics, and other related information that was provided to the district by private entities, the district must withhold such information under section 552.149(a) of the Government Code.

In summary, to the extent the requestor seeks information from the board that is maintained by the board, the information is public and must be released pursuant to section 41.66(d) of the Tax Code. To the extent the information at issue is maintained only by the district, and to the extent any of the submitted information was provided by property owners in connection with an appraisal, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. To the extent the information at issue is maintained only by the district, and to the extent any remaining information relates to real property sales prices, descriptions, characteristics, and other related information that was provided to the district by private entities, the district must withhold such information under section 552.149(a) of the Government Code. The district must release any remaining information.

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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 628803

Enc. Submitted documents

c: Requestor
(w/o enclosures)