



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 15, 2016

Mr. Michael B. Gary  
Legal Counsel  
Office of the Office of the Chief Appraiser  
Smith County Appraisal District  
245 South Southeast Loop 323  
Tyler, Texas 75702

OR2016-25410

Dear Mr. Gary:

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# 634221.

The Smith County Appraisal Review Board (the "board") received a request for data submitted at board hearings for specified properties for 2014 and 2015. You claim the submitted information is subject to a previous request for a ruling. You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, we note you have notified third parties of the request for information and of their right to submit arguments stating why their information should not be released.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered your arguments and reviewed the submitted

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<sup>1</sup>The third parties notified pursuant to section 552.305 are the following: Best Western–Southpark; Candlewood Suites; Fairfield Inn–Marriott ("Fairfield"); Hampton Inn–Tyler; Hawthorn Suites; and La Quinta Inn & Suites–Lindale.

representative sample of information.<sup>2</sup> We have also received and considered comments submitted by a legal representative of Fairfield.

Initially, you and Fairfield assert the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-18491 (2016). Upon review, however, we note Open Records Letter No. 2016-18491 was issued to the Smith County Appraisal District (the “district”). The present request for information was addressed to the board. You assert the district and board are not separate entities for purposes of the Act and, therefore, the board must rely on the previous ruling to the district and withhold the information at issue in accordance with that ruling. However, we note the district and board are separate entities. *See* Attorney General Opinion DM-462 at 2 n.5 (1997) (“The appraisal district board and appraisal review board are separate entities.” (citing *Towne Square Assocs. v. Angelina County Appraisal Dist.*, 709 S.W.2d 776, 778 (Tex. App.—Beaumont 1986, no writ); *Corchine P’ship v. Dallas County Appraisal Dist.*, 695 S.W.2d 734, 735 (Tex. App.—Dallas 1985, writ ref’d n.r.e))). Accordingly, the board may not rely on Open Records Letter No. 2016-18491 as a previous determination to withhold any of the information at issue. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Thus, we will address the submitted arguments against disclosure.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from the remaining third parties explaining why their information should not be released to the requestor. Thus, we have no basis to conclude the release of the submitted information would implicate the interests of the remaining third parties, and none of the submitted information may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

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<sup>2</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

You and Fairfield assert the information at issue is confidential under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code.<sup>3</sup> You inform us the information at issue was presented at open board hearings conducted pursuant to section 41.66(d) of the Tax Code. Section 41.66 governs the hearing procedures of appraisal review boards and provides in relevant part:

(d) Except as provided by Subsection (d-1), hearings conducted as provided by this chapter are open to the public.

(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.

(d-2) Information described by Subsection (d-1) is considered information obtained under Section 22.27.

Tax Code § 41.66(d)-(d-2). Section 41.66(d) provides hearings conducted pursuant to chapter 41 of the Tax Code are open to the public. *See id.* § 41.66(d). However, in response to a joint motion by the property owner and the chief appraiser, the board must conduct a closed hearing. *See id.* § 41.66(d-1). Information produced at a closed hearing is confidential pursuant to section 22.27 of the Tax Code. *See id.* § 41.66(d-2); *see also id.* § 22.27(a) (making confidential certain information owner of property provides to appraisal office in connection with appraisal of property). Although you and Fairfield claim the submitted information is confidential under section 22.27(a), we note the information is not confidential under section 22.27 because it was produced at open hearings rather than closed hearings. *See id.* § 41.66(d-1)-(d-2). Therefore, the board may not withhold information presented at open board hearings under section 22.27. Likewise, although Fairfield also raises sections 552.104 and 552.110 of the Government Code, because the property owners and chief appraiser failed to close the hearings at issue under section 41.66(d-1), this information may not be withheld on either of those bases. As no further exceptions to disclosure have been raised, the board must release the submitted information.

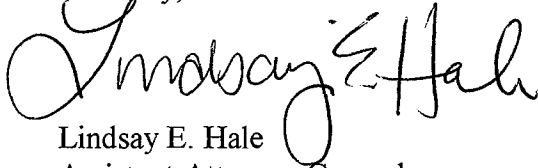
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>3</sup>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.

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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/bhf

Ref: ID# 634221

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Parties  
(w/o enclosures)