



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 5, 2019

Mr. Lee Vickers
Counsel for the Hays Central Appraisal District
Martinec Winn & Vickers P.C.
611 South Congress Avenue, Suite 450
Austin, Texas 78704

OR2019-24758

Dear Mr. Vickers:

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# 784238.

The Hays Central Appraisal District (the "district"), which you represent, received a request for records pertaining to agricultural exemptions for specified properties during a certain time period.¹ You state the district has released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 encompasses information made confidential by other statutes. You contend the submitted information is confidential under section 23.45 of the Tax Code. We understand the district is charged with administering special valuations for certain types of agricultural property, including land designated for agricultural use and open space land. *See* Tex. Const. art. VIII, §§ 1-d, 1-d-1. A property owner seeking a special designation must submit an application to the district; the requirements of each application are contained in different subchapters of the Tax Code, which contain different requirements for valuation. Subchapter C of chapter 23 of the Tax Code addresses land designated for agricultural use, while subchapter D addresses qualified open space land.

¹You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

You note that under subchapter C, section 23.45 provides “[a]n application for agricultural designation filed with a chief appraiser is confidential and not open to public inspection.” Tax Code § 23.45(a). We understand the information at issue consists of data obtained from applications filed with the district pursuant to section 23.45(a). *Id.* (confidentiality applicable to both application and information contained therein).

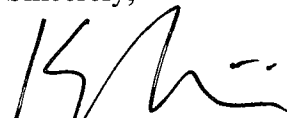
The information at issue pertains to “1-d-1” open space valuation designation applications. Open space valuation designations are governed under subchapter D, which does not include the section 23.45(a) language present in subchapter C. Thus, we find that section 23.45(a) applies only to an application filed under subchapter C. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Accordingly, we find section 23.45(a) of the Tax Code is not applicable to the submitted information, and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the district must withhold the public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The district must release the 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/be

Mr. Lee Vickers - Page 3

Ref: ID# 784238

Enc. Submitted documents

c: Requestor
(w/o enclosures)