



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 10, 2019

Mr. James R. Evans, Jr.
Counsel for the Wood County Appraisal District
Low Swinney Evans & James, PLLC
3305 Northland Drive, Suite 500
Austin, Texas 78731

OR2019-25313

Dear Mr. Evans:

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# 785106.

The Wood County Appraisal District (the "district"), which you represent, received a request for eight categories of information pertaining to comparison sales data used by the district. You claim the submitted information is excepted from disclosure under sections 552.101, 552.110, and 552.149 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the Greater Tyler Association of Realtors ("GTAR"). Accordingly, you state, and provide documentation showing, you notified GTAR of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of 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, we note you have only submitted information responsive to the first category of requested information. Although you state you have submitted a representative sample of

the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the district to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any such information existed on the date the district received the request, we assume the district has released it. If the district has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Although you argue some of the submitted information is subject to section 552.110 of the Government Code, we note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider your argument under section 552.110 of the Government Code. 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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from GTAR explaining why its information at issue should not be released. Therefore, we have no basis to conclude GTAR has a protected proprietary interest in the information at issue, and the district may not withhold any portion of it 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.

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, 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.

Tax Code § 22.27(a). We understand the district is an “appraisal office” for purposes of section 22.27(a). You state Exhibit B consists of information provided to the district by property owners in connection with the appraisal of the owners’ properties after promises the information will be held confidential. You do not inform us any of the exceptions in section 22.27(b) apply in this instance. Based on your representations and our review, we find Exhibit B is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code.

Additionally, you argue Exhibit C is confidential under section 22.27(a). We note section 22.27(a) is applicable only to “information the owner of property provides to the appraisal office in connection with the appraisal of the property[.]” *Id.* (emphasis added). *Cf.* Open Records Decision No. 550 at 7 (1990) (Tax Code § 22.27 not applicable to information compiled by private market research firm and provided to appraisal district). You state Exhibit C was obtained from a multiple listing service. Thus, the district did not obtain the information at issue from the owners of the properties to which this information pertains. We therefore conclude Exhibit C 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. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

You assert Exhibit C is excepted from disclosure under section 552.149 of the Government Code, which 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].

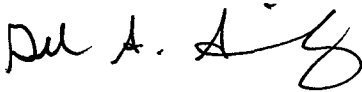
Gov’t Code § 552.149(a). Section 552.149 applies only to counties that have a population of more than 50,000. *Id.* § 552.149(e). We note Wood County has a population of less than 50,000. Consequently, section 552.149 is not applicable to Exhibit C and the district may not withhold any of it on that basis.

In summary, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with 22.27 of the Tax Code. 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,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with a prominent "G" and "A".

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 785106

Enc. Submitted documents

c: Requestor
(w/o enclosures)