



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 16, 2019

Ms. Diane McCarthy  
Legal Counsel  
Harris County Appraisal District  
P.O. Box 920975  
Houston, Texas 77292-0975

OR2019-25935

Dear Ms. McCarthy:

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# 786054.

The Harris County Appraisal District (the "district") received a request for information pertaining to two specified property accounts. You state you will release some information. You claim some of 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. 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.

Tax Code § 22.27(a). The district argues portions of the submitted information are confidential pursuant to section 22.27(a). The district states it is an appraisal office for purposes of section 22.27. The district states Exhibit C-1, Exhibit C-2 and portions of Exhibit D, which it marked, “[were] received as part of information provided to” the district “by the property owner in connection with the appraisal of the owner’s property.” In addition, the district informs us the remaining information at issue in Exhibit D, which it marked, can be easily used to derive the information provided by the property owner. The district informs us none of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b). Upon review, we find the information the district marked is confidential under section 22.27(a) of the Tax Code and must generally be withheld under section 552.101 of the Government Code.

However, we note the requestor is an investigator with the Internal Revenue Service (the “IRS”). Section 7602 of title 26 of the United States Code gives the IRS a special right of access to certain information. Specifically, pursuant to section 7602, the Secretary of the Treasury is authorized to “examine any books, papers, or other data which may be relevant or material” to a particular tax inquiry for the purpose of “inquiring into any offense connected with the administration or enforcement of the internal revenue laws.” *See* 26 U.S.C. § 7602(a)(1), (b). Therefore, to the extent the requestor seeks the information for the purpose of “inquiring into any offense connected with the administration or enforcement of the internal revenue laws,” then the requestor has a right of access to the information at issue under federal law.

However, there is a conflict between the requestor’s right of access under section 7602 of title 26 of the United States Code and the confidentiality requirements of section 22.27 of the Tax Code. As federal law, section 7602 of title 26 preempts any conflicting state provisions, including section 22.27 of the Tax Code. *See English v. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation); *see also* U.S. Const., art. VI, cl. 2 (Supremacy Clause); *Delta Airlines, Inc. v. Black*, 116 S.W.3d 745, 748 (Tex. 2003) (discussing federal preemption of state law). Thus, although the information the district marked is confidential pursuant to 22.27 of the Tax Code, the requestor’s right of access under federal law preempts the state statute to the extent the requestor is conducting an ongoing investigation. Accordingly, if the district determines the requestor seeks the information for the purposes of “inquiring into any offense connected with the administration or enforcement of the internal revenue laws,” then the district may not withhold the information at issue under section 552.101 of the

Government Code in conjunction with section 22.27 of the Tax Code, but instead must release it to the requestor pursuant to section 7602 of title 26 of the United States Code. However, if the district determines the requestor does not seek the information for the purposes of "inquiring into any offense connected with the administration or enforcement of the internal revenue laws," then the district must withhold the information it marked pursuant to section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code.

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,



Kimbell Kesling  
Attorney  
Open Records Division

KK/eb

Ref: ID# 786054

Enc. Submitted documents

c: Requestor  
(w/o enclosures)