



**State of New York
Department of State
Committee on Open Government**

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FOIL AO 19863

ADVISORY OPINION

TO: Whom it May Concern

FROM: Kristin O’Neill
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Re: Tax Assessment Comparable Reports

DATE: May 21, 2024

The Committee on Open Government is authorized to issue advisory opinions.

In April 2023, the Committee on Open Government (Committee) received a request for an advisory opinion regarding the accessibility of tax assessment comparability records (*i.e.*, the addresses of the properties used as comparables and the dates of their sales and selling prices used to determine a property’s assessment). At that time, we reviewed the Committee’s previous advisory opinions on the topic as well as relevant existing case law. See Freedom of Information Law (FOIL) AO [15744](#) (referencing *General Motors Corporation v. Town of Massena*, 693 N.Y.S.2d 870 (St. Lawrence Co., 1999)). Thereafter and based thereon, in April 2023 the Committee issued FOIL AO 19845, agreeing that comparables data – and a report opining on such data – may be withheld from disclosure as inter-agency material.

In September 2023, however, the New York State Appellate Division, Second Department, issued a decision – *Eckel v. Nassau County*, 219 A.D.3d 1426 (2d Dep’t 2023) – which changes our analysis, and we are issuing this new advisory opinion consistent with *Eckel*. This new opinion will supersede FOIL AO 19845.

By way of background, FOIL is based upon a presumption of access. All records of an agency are available, except to the extent that records or portions thereof fall within one or more of the statutory grounds for denial set forth in Public Officers Law § 87(2). The ground for denial relevant to the issue of real estate comparables data is § 87(2)(g), referred to as the “inter-agency or intra-agency material” exemption. This exemption to disclosure permits an agency to withhold such material except to the extent that the material contains: “i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; or iv. external audits, including but not limited to audits performed by the comptroller and the federal government.” This exemption exists protect the deliberative process. See *Gould v. New York City Police Dep’t*, 89 N.Y.2d 267, 276 (1996) (the purpose underlying the intra-agency exemption, is “to protect the deliberative process of the

government by ensuring that persons in an advisory role [will] be able to express their opinions freely to agency decision makers”).

Against this background, the supreme court in *General Motors* had held that tax assessment comparability records fit squarely within the intra-agency exemption to disclosure because they did not, in the court’s consideration, constitute statistical or factual tabulations or data. Rather, the court found that:

[t]he specific comparable sales used by an appraiser in the formulation of his opinion of value do not fit into the statistical or factual data exception because they are not a mere recitation of readily available numbers or items. To prepare a real estate appraisal the professional appraiser must necessarily cull through public real estate transaction records from many sources to find properties which he or she, subjectively, deems similar enough to the subject property to warrant further analysis. . . . Choosing any particular comparable property involves a thought process and professional judgment which cannot be classified as mere data gathering.

General Motors, 693 N.Y.S.2d at 872.

However, notwithstanding this decision, on September 20, 2023, the Appellate Division, Second Department held that “contrary to the [municipality’s] contentions, the . . . requested information about the comparables constituted factual data insofar as it constituted ‘objective information,’ separate from the ‘opinions, ideas, or advice’ contained in the assessment report. *Eckel v. Nassau County*, 219 A.D.3d 1426, 1428 (2d Dep’t 2023). Given this judicial precedent, it is now our opinion that agencies are obligated to provide tax assessment comparability data in response to FOIL requests.

This advisory opinion supersedes FOIL AO 19845 issued in April 2023, and that opinion is withdrawn.