



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 7, 2006

Mr. Joseph T. Longoria
Perdue Brandon Fielder Collins & Mott LLP
1235 North Loop West, Suite 600
Houston, Texas 77008

OR2006-07220

Dear Mr. Longoria:

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# 253341.

The Collin County Appraisal District (the "district"), which you represent, received requests for information pertaining to ratio studies performed or received by the district in 2005 and 2006 sales information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also contend that some of the requested information is subject to section 552.027 of the Government Code. You also inform us that Multiple Listing Service ("MLS") of the Collin County Association of Realtors and CoStar Realty Information, Inc. ("CoStar") were notified of the district's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor. *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). CoStar, in comments submitted to this office, asserts that the information is excepted under section 552.110 of the

Government Code. *See* Gov't Code § 552.305(d). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, we address your arguments under section 552.027 of the Government Code. Section 552.027(a) provides that “[a] governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.” Gov't Code § 552.027(a). Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information

books and other materials that are also available as research tools elsewhere *to any member of the public*. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

INTERIM REPORT TO THE 74TH LEGISLATURE OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., SUBCOMMITTEE ON OPEN RECORDS REVISIONS 9 (1994) (emphasis added). Therefore, section 552.027 excludes commercially available research material from the definition of “public information.”

You argue that the submitted information is commercially available; however, you also inform us that the district obtained the submitted information pursuant to a licensing agreement with MLS. We note that access to a local MLS is generally limited to licensed real estate brokers and appraisers. Where access to information is limited to certain licensed individuals, such information cannot be said to be available “to any member of the public.” Therefore, we are unable to conclude that section 552.027 is applicable to the submitted MLS information. Nevertheless, to the extent that the MLS information is, in fact, available to any member of the public, we agree that such information falls within the scope of section 552.027 and need not be released. To the extent that access to the MLS information is limited to particular individuals, the information is not subject to section 552.027 and must be released unless it falls within an exception to public disclosure. *See* Gov't Code § 552.002.

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You assert that the submitted information is excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Section 22.27(a) of the Tax Code provides the following:

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 that the district is an "appraisal office" for purposes of section 22.27.

You state that the information in Exhibit 1 and some information in Exhibit 6 was provided to the district voluntarily from property owners after a promise that the information would be held confidential. Based on these representations, we agree that this information is confidential under section 22.27(a) of the Tax Code, and the district must withhold this information under section 552.101 of the Government Code.

You inform us that the remaining information was obtained from MLS and CoStar pursuant to licensing agreements. You state that the district obtained this information voluntarily only after a promise that the information would be held confidential. We note, however, that section 22.27(a) protects "information the owner of property provides to the appraisal office in connection with the appraisal of the property[.]" *Id.* § 22.27(a). Thus, you have not demonstrated that the information obtained from MLS or CoStar falls within the scope of section 22.27(a), and the district may not withhold any information obtained from MLS or CoStar under section 552.101 of the Government Code on that ground. *Cf.* Open Records Decision No. 550 at 7 (1990) ("Information compiled by a private market research firm and provided to an appraisal district as part of a commercial transaction cannot be said to come within the kinds of information made confidential by section 22.27.").

CoStar asserts that its information is excepted under section 552.110 of the Government Code. Section 552.110(b) excepts from disclosure "[c]ommercial or financial information

for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Having considered CoStar’s arguments and the information at issue, we find that CoStar has made a specific factual or evidentiary showing that release of its information would cause the company substantial competitive harm; therefore, the submitted information that was provided by CoStar to the district must be withheld pursuant to section 552.110(b).²

We note that 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) 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, MLS has not submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of MLS, and the district may not withhold any portion of the submitted information on that basis. *See* 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 (1990).

Finally, we note that some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

To conclude, to the extent that the MLS information is available to any member of the public, such information falls within the scope of section 552.027 and need not be released. The submitted information that property owners voluntarily provided to the district in connection with the appraisal of property after a promise of confidentiality is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the

²As we are able to resolve this under section 552.110(b), we do not address CoStar’s argument for exception of this information under section 552.110(a).

Government Code. The submitted information that was provided by CoStar to the district must be withheld pursuant to section 552.110(b). The district must release the remaining information, but any copyrighted information may only be released in accordance with copyright law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Matt T. McLain
Assistant Attorney General
Open Records Division

MTM/JLC/dh

Ref: ID# 253341

Enc. Submitted documents

c: Ms. Abbigail Pendergraft
O'Connor & Associates
2000 North Loop West, Suite 200
Houston, Texas 77018

Jonathon Coleman
CoStar Realty Information, Inc.
2 Bethesda Metro Center
Bethesda, Maryland 20814-5388
(w/o enclosures)