



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2007

Mr. James G. Nolan
Open Records Attorney
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2007-03953

Dear Mr. Golan:

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# 277039.

The Texas Comptroller of Public Accounts (the "comptroller") received requests for specified categories of information related to the Annual Property Value Study that was conducted by the comptroller's Property Tax Division pertaining to the Aldine, Crosby, Galena Park, and Spring Independent School Districts. You state that some of the requested information will be provided to the requestor, but assert that the submitted information is excepted under section 552.101 of the Government Code. You also state that the submitted documents may contain proprietary information pertaining to CoStar Realty Information, Inc. ("CoStar") that is subject to exception under the Act, but you assert no arguments and take no position as to whether the information is excepted from disclosure on that basis. CoStar, in correspondence to this office, asserts that the requested information is either not subject to the Act or excepted under section 552.110 of the Government Code.¹ *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.²

¹We have also received comments from the Longview Area Association of Realtors, Inc.

²We 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.

CoStar contends that the submitted information is not subject to disclosure under the Act because it is commercially available to the requestor. Section 552.027 of the Government Code provides the following:

- (a) A governmental body is not required under [the Act] 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.
- (b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.
- (c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. This section 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. CoStar states that the submitted information is commercially available; however, it also states that the information at issue "is made available to subscribers or to those who pay for ad-hoc access, in each case subject to the terms of written or online license agreements that preclude a licensee like the [c]omptroller from disseminating the content from CoStar to an unlicensed third party like [the requestor] or otherwise making such content from CoStar publicly available." Where access to information is limited to certain persons, such information cannot be said to be available to any member of the public. Accordingly, we conclude that the information at issue does not fall within the scope of section 552.027, but is "public information" that must be released, unless it falls within an exception to public disclosure. *See id.* § 552.002.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 403.304 of the Government Code provides the following:

- (a) All information the comptroller obtains from a person, other than a government or governmental subdivision or agency, under an assurance that the information will be kept confidential, in the course of conducting a study of school district values is confidential and may not be disclosed except as provided in Subsection (b).
- (b) Information made confidential by this section may be disclosed:

- (1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
- (2) to the person who gave the information to the comptroller; or
- (3) for statistical purposes if in a form that does not identify specific property or a specific property owner.

Gov't. Code § 403.304. You inform us that the information at issue pertains to commercial real estate sales and valuation information obtained from CoStar, a non-governmental entity. You state that the information was obtained in the course of conducting the comptroller's Annual Property Value Survey, a study required under section 403.302 of the Government Code, which evaluates school district property values. *See id.* § 403.302. You inform us that the information was obtained under an assurance that it will be kept confidential by the comptroller. You also state that none of the exceptions to confidentiality set forth in subsection 403.304(b) applies in this instance. Based on your representations and our review, we agree that the submitted information must be withheld under section 552.101 in conjunction with section 403.304(a) of the Government Code. As we are able to reach this conclusion, we do not address the remaining arguments for exception of the submitted information.

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

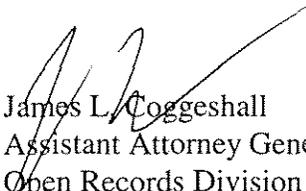
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jb

Ref: ID# 277039

Enc. Submitted documents

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(w/o enclosures)

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