



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2008

Mr. James G. Nolan
Assistant General Counsel
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2008-06141

Dear Mr. Nolan:

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# 307848.

The Texas Comptroller of Public Accounts (the "comptroller") received requests for specified information pertaining to annual property value studies for the Alief, Childress, Clarendon, Commerce, and Greenville Independent School Districts. You state that some of the requested information has been provided to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. You also state, and provide documentation showing, that you notified CoStar Group, Inc. ("CoStar"), North Texas Real Estate Information Systems, Inc. (NTREIS), and Amarillo Association of Realtors (AAR) of the comptroller'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). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304

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.

(interested party may submit comments stating why information should or should not be released).

We initially address CoStar's 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."

CoStar claims that a portion of the requested information, the CoStar Reports (the "reports"), constitutes commercially available information. However, CoStar states that access to the reports is limited to subscribers subject to the terms of written license agreements that preclude dissemination of the reports to unlicensed third parties. CoStar further states that the reports are not within the possession of the subscriber, but available through the CoStar website which requires a password. Where access to information is limited to certain individuals, such information cannot be said to be available "to any member of the public." Therefore, we find that CoStar has failed to demonstrate that the reports are commercially available for the purposes of section 552.027 of the Government Code. See Gov't Code § 552.027. Accordingly, the submitted information is not subject to section 552.027 and must be released unless it falls within an exception to public disclosure.

You assert 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 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 was obtained from CoStar, NTREIS, and AAR, which are non-governmental entities, in the course of conducting the comptroller's Annual Property Value Survey, a study required under section 403.302 of the Government Code that evaluates school district property values. *See* Gov't Code § 403.302. You state that the information was obtained pursuant to subscription agreements with these entities. The agreement with CoStar contains a confidentiality provision. The agreements with NTREIS and AAR incorporate the Rules and Regulations of these entities, and these Rules and Regulations provide that the information at issue will be considered confidential by the comptroller. Thus, we agree that the comptroller obtained the information under assurances that it will be kept confidential. 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 is confidential under section 403.304(a) of the Government Code.

You also raise section 552.148 of the Government Code, which provides in relevant part, "[i]nformation 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 Section 552.021." Gov't Code § 552.148(a). You state that the submitted information consists of multiple listing service information obtained from private entities. Based on your representations and our review of the information at issue, we find that the information is excepted from disclosure under section 552.148(a) of the Government Code.

However, section 403.303 of the Government Code provides that a school district may protest the comptroller's findings in the study by filing a petition with the comptroller. *See* Gov't Code § 403.303. Subsection (c) of section 552.148 of the Government Code provides in relevant part the following:

[n]otwithstanding Subsection (a) or Section 403.304, Government Code, so as to assist a property owner, a school district, or an appraisal district in a

protest filed under Section 403.303, Government Code, the property owner, the district, or an agent of the property owner or district may, on request, obtain from the comptroller any information, including confidential information, obtained by the comptroller in connection with the comptroller's finding that is being protested.

Gov't Code § 552.148(c). Thus, subsection 552.148(c) provides access to information that is otherwise confidential under sections 403.304 and 552.148. The requestor asserts, and you do not dispute, that he represents the school districts at issue; however, you state that none of the school districts had filed a protest under section 403.303 on the date that the comptroller received the request for information. Therefore, we agree that the requestor does not have access to the submitted information pursuant to subsection 552.148(c). Consequently, the comptroller must withhold the submitted information under section 552.148(a) of the Government Code and under section 552.101 in conjunction with section 403.304(a) of the Government Code.²

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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,

²As our ruling is dispositive, we do not address the other arguments to withhold the submitted information. However, we note that, should the requestor make a new request for the information at issue after the filing of protests on behalf of the districts, pursuant to section 552.148(c), the comptroller may not withhold the information at issue under section 552.148(a) or 403.304(a). *See* Gov't Code § 552.148(c).

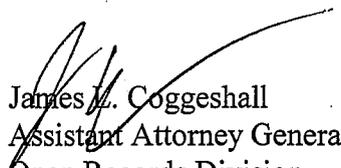
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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/jh

Ref: ID# 307848

Enc. Submitted documents

c: Mr. Woodrow Menn
Perdue, Brandon, Fielder, Collins, and Mott L.L.P.
1235 North Loop West, Suite 600
Houston, Texas 77009
(w/o enclosures)

Mr. Christopher Winters
CoStar Group, Inc.
2 Bethesda Metro Center, 10th Floor
Bethesda, Maryland 20814-5388
(w/o enclosures)

Mr. Jerome L. Prager
Counsel to North Texas Real Estate Information Systems, Inc.
Prager & Miller, P.C.
14911 Quorum Drive, Suite 320
Dallas, Texas 75254
(w/o enclosures)

Amarillo Association of Realtors
5601 Enterprise Circle
Amarillo, Texas 79106
(w/o enclosures)