ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2005

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

OR2005-03361

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# 222845.

The Comptroller of Public Accounts (the "comptroller") received a request for information related to the comptroller's Annual Property Value Study (the "study") for the Houston Independent School District, including all sales data gathered by the comptroller that was used in the study, as well as all sales data that was gathered but not used in the study. The requestor also seeks to determine the sources from which the sales data was gathered. You indicate that some information will be released to the requestor. You claim that the submitted information is not subject to disclosure under the Act. Alternatively, you claim that the comptroller is prohibited from making copies of the requested information pursuant to section 552.101 of the Government Code in conjunction with federal copyright laws. You also state that the submitted information may contain proprietary information subject to exception under the Act, and pursuant to section 552.305 of the Government Code, you notified CoStar Group, Inc. ("CoStar") of the request and of its right to submit arguments to this office as to why the requested information should not be released to the requestor.[1] We have received comments from CoStar. We have also received comments submitted by the

[1] *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered all of the submitted arguments and reviewed the submitted representative sample of the requested information.[2]

Both the comptroller and CoStar argue that the submitted information is not subject to disclosure under the Act because the reports are commercially available to the requestor. Section 552.027 of the Government Code provides:

> (a) 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.
>
> (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, and the comptroller based on CoStar's representations, assert that the submitted information is "commercially available to the requestor through the CoStar COMPS Express service," which is accessible via the internet. The requestor, however, asserts that the information at issue is not commercially available. Whether the information at issue is commercially available is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Therefore, based on the comptroller's representations, we conclude that

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[2] We 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.

the information at issue is commercially available to the requestor. Further, the comptroller indicates that it uses the information at issue for research purposes. Accordingly, we conclude that the information falls within the scope of section 552.027, and the comptroller is not required to release it in response to this request. As our conclusion is dispositive, we need not address any remaining arguments against disclosure.

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).

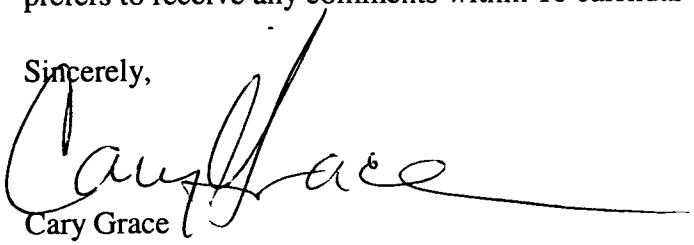
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Tex. 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 Texas Building and Procurement Commission 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,



Cary Grace
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ECG/jev

Ref: ID# 222845

Enc. Submitted documents

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