



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2006

Mr. David M. Swope  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2006-03947

Dear Mr. Swope:

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# 245720.

The Harris County Appraisal District (the "district") received a request for "a copy of the comparable sales that occurred in 2003 through 2006 which [the district] has access to via CoStar." You claim that the submitted information is not subject to disclosure under the Act. Alternatively, you claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also indicate that a third party may have a proprietary interest, and thus, pursuant to section 552.305 of the Government Code, you have notified CoStar Group ("CoStar") of the request and of the company's right to submit arguments to this office as to why the information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered all of the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the argument that the submitted information is commercially available to the public and is therefore not subject to the Act. Section 552.027 provides in part:

(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.

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 claim that "the information at issue is commercially available from [CoStar]." We note, however, that the requestor asserts, and provides documentation demonstrating, that CoStar does not allow its competitors to have access to the information at issue. CoStar confirms that the information at issue "is made available to subscribers or 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 [district] 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 individuals, it cannot be said that such information is available "to any member of the public." Therefore, we find you and CoStar have failed to demonstrate that the submitted information came from the type of commercial book or publication contemplated by section 552.027. *See* Gov't Code § 552.027. Accordingly, we conclude that the submitted information is "public information" and, therefore, subject to the Act. *See id.* § 552.002.

We turn next to CoStar's claim that the submitted information is excepted from public disclosure 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 the submitted information would cause the company substantial competitive harm. Thus, the submitted information must be withheld pursuant to section 552.110(b).<sup>1</sup>

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.

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<sup>1</sup>As our ruling on this issue is dispositive, we need not address CoStar's remaining argument for this information.

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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/sdk

Ref: ID# 245720

Enc. Submitted documents

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