



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 30, 2007

Mr. Phong P. Phan  
General Counsel  
Travis County Appraisal District  
P.O. Box 149012  
Austin, Texas 78714-9012

OR2007-06784

Dear Mr. Phan:

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# 279773.

The Travis Central Appraisal District (the "district") received a request to review and inspect the four retail market surveys district staff cited during a certain arbitration hearing held on March 1, 2007. The requestor also seeks "access to review and inspect any notes, calculations, or computations made by the [d]istrict that would show specifically how the [d]istrict arrived at or set the numbers shown on the actual [p]roforma [r]ent and [e]xpense sheet used by the [d]istrict for retail properties during the year 2006." You inform us that the district released to the requestor portions of the requested information. You claim that under section 552.027 of the Government Code, the Act does not require the district to grant the requestor access to the requested four surveys. We have considered your claim and reviewed the submitted responsive information, Enclosure No. 3.<sup>1</sup> We have also considered the requestor's comments. *See* Gov't Code § 552.304.

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<sup>1</sup>You state the information relating to Korpacz is a representative sample of the complete Korpacz Real Estate Investor Survey. 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.

Section 552.027(a) provides as follows:

(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(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).

You state that the information in Enclosure 3 consists of publications the district purchased for research purposes and as a resource guide in the valuation process mandated by the Property Tax Code. You state that the publications are commercially available to the public and access to them is not merely limited to only individuals in the property tax arena or certain licensed individuals. You state that the requestor is free to obtain the publications directly from the publishing companies.” Based on your representations, we find that, with the exception of the CoStar information, the district has established that the information at issue is “information in a commercial book or publication purchased or acquired by the governmental body for research purposes . . . [and is] commercially available to the public.” Gov’t Code § 552.027(a). However, with regard to CoStar’s information, this office has been provided documentation that at least in one instance CoStar has refused to allow access to its information. *See* Open Records Letter No. 2006–3947 (2006). Because CoStar has

refused access to its information, it cannot be said that such information is available “to any member of the public.” We therefore find that the CoStar information is not subject to section 552.027.

With regard to the information we have found to be subject to section 552.027, we turn to the requestor’s arguments. The requestor argues that subsection (c) of section 552.027 is applicable in this instance because the district cited to the surveys as evidence in the arbitration hearing. The requestor contends that this reference to the surveys constitutes “incorporation” into the district’s rules or policy for purposes of section 552.027(c). We disagree. We have not been shown any district rule or policy into which the referenced surveys were incorporated. The fact that the district referred to the surveys as evidence during an arbitration hearing is not an incorporation of those surveys into district rule or policy. Moreover, the district states that the surveys are not made part of, incorporated into, or referred to in a rule or policy of the district. Accordingly, subsection (c) is not applicable here.

The requestor also argues that under Open Records Decision No. 550 (1990), he has a right to review and inspect the surveys. However, that decision determined that a survey of income producing properties in Tarrant County compiled by a private market research firm and provided to an appraisal district as part of a commercial transaction is neither excepted from public disclosure by section 3(a)(10) of the Open Records Act nor confidential under section 22.27 of the Property Tax Code. *See* Open Records Decision No. 550 (1990). Thus, while ORD 550 determined that the survey at issue was not excepted from disclosure, the decision did not address the applicability of section 552.027 to the requested information, the issue the district has raised in this case. Therefore, we conclude that, based on section 552.027, the Act does not require the district to allow the requestor to review and inspect the requested surveys other than CoStar’s information.

With regard to the CoStar information, we note that the information includes a notation that CoStar licensed the information to the district. We further note that CoStar has in other open record rulings of this office claimed a proprietary interest in its licensed information and this office has consistently determined in those rulings that because CoStar has established that the public release of CoStar’s proprietary information would cause it substantial competitive harm, it is excepted from disclosure under section 552.110(b) of the Government Code. *See, e.g.,* Open Records Letter Nos. 2007-00978 (2007), 2006-10309, 2006-7249, 2006-7220, 2005-4254, 2006-3947 (2006). Section 552.110(b) protects 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 . . . .” Gov’t Code § 552.110(b). In this case, we have received no arguments from CoStar regarding the proprietary nature of its information. Nor have we received information that shows that the district notified CoStar of this request for its information and of its right to submit argument to this office as to why the requested information should not be released. *See* Gov’t Code § 552.305(d). We assume that CoStar

did not receive notification of this request for its information. However, because the information here consists of CoStar's licensed information and in light of the prior rulings of this office in which this office recognizes CoStar's right to protect its licensed information from harmful public disclosure, we determine that release of the licensed information here would similarly cause CoStar substantial competitive harm. Accordingly, we conclude that, based on section 552.110(b), the district must withhold CoStar's information from public 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).

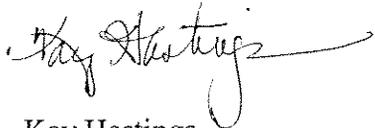
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/sdk

Ref: ID# 279773

Enc: Submitted documents

c: Mr. David Bawcom  
Texas ProTax Austin  
7333 East Highway 290  
Austin, Texas 78723  
(w/o enclosures)