



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2008

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

OR2008-03965

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# 308176.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information related to the Annual Property Value Study pertaining to four school districts. You state that you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. You also state that releasing the requested information may implicate the interests of a third party. Accordingly, you have notified the interested third party, CoStar Realty Information, Inc. ("CoStar"), of the request and of its opportunity to submit comments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have received arguments from CoStar. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that some the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-03457 (2008). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the comptroller must continue to rely on that ruling as a previous determination and withhold or release this information in accordance with Open Records Letter No. 2008-03457. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type

of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, you acknowledge, and we agree, that the district failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b) (governmental body must ask for decision from this office and state exceptions that apply within ten business days of receiving written request for information). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.-Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.101 and 552.148 of the Government Code and the interests of CoStar can provide compelling reasons to overcome this presumption; therefore, we will consider whether the submitted information is excepted under the Act.

We next 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 that 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.

Id. § 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 that evaluates school district property values. *See id.* § 403.302. Further, you inform us that the information was obtained under an assurance that the information will be kept confidential by the comptroller. You also state that none of the exceptions to confidentiality set forth in subsection 403.304(b) apply 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.¹

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, 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).

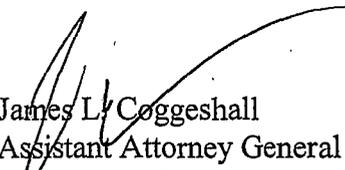
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging 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

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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# 308176

Enc. Submitted documents

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