JOHN CORNYN

January 18, 2001

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2001-0187

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143318.

The Comptroller of Public Accounts (the "comptroller") received a request for all taxability and letter rulings "requested by Ryan & Co. for the period January 1, 1999 through the present, and the Comptroller's office response to the request, if any." You seek a ruling from this office as to whether the identity of the taxpayer representative and the taxpayer representative's firm contained within such rulings and requests are excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 111.006 and 151.027 of the Tax Code. We have considered the exception you claim and reviewed the submitted information.[1]

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 111.006(a)(2) of the Tax Code provides that information "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of

[1]We assume that the "representative samples" of records submitted to this office are 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 taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Although this office has determined that all supporting documents or other information provided to the comptroller by or on behalf of the taxpayer must be withheld from the public pursuant to section 111.006(a)(2) of the Tax Code, "private letter rulings" and administrative hearing decisions must be released to the public with the identity of the taxpayer redacted.

With regard to the identity of the taxpayer's representative, you bring to our attention the fact that this office has previously held that the identity of a taxpayer's representative must be withheld from the public. However, the only purpose for withholding the representative's identity under section 111.006(a)(2) would be to protect the identity of the taxpayer. Thus, we have previously concluded that the identity of the representative must be withheld pursuant to section 111.006(a)(2) in those situations where this office has been informed that the release of the representative's identity would necessarily reveal the identity of the taxpayer. On the other hand, absent such a representation, this office has no basis on which to conclude that such would be the case. In fact, prior rulings of this office have concluded that the identity of the taxpayer's attorney is not confidential under section 111.006(a)(2). In this instance, you have not provided this office with any information to suggest that the release of the identity of the taxpayers' representative would directly reveal the identities of the taxpayers. We therefore conclude that in this instance the comptroller must release to the requestor the identity of the taxpayer representative contained in requested letter rulings and taxability rulings, as well as in the requests that led to the issuance of such rulings.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 General Services 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. 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,

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 143318

Encl. Submitted documents

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(w/o enclosures)