



January 31, 2001

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

OR2001-0376

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# 143772.

The Comptroller of Public Accounts (the "comptroller") received a request for a list of open administrative hearings, showing the authorized representative, the issue, the audit period, and the dollar amount for each hearing. You state that the you intend to release a list showing some of the requested information. However, you claim that the requested dollar amounts 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 exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note your indication that the comptroller is unable to provide the requested hearing issues in the requested electronic form. The Public Information Act does not require a governmental body to create or prepare new information. Open Records Decision Nos. 572 (1990), 342 (1982). Additionally, the Act does not require a governmental body to prepare information in a form requested by a member of the public. Open Records Decision No. 467 (1987). However, if a request for public information requires programming or manipulation of data or the information could be made available in the requested form only at a cost that covers the programming and manipulation of data, a governmental body is required to provide the requestor with a written statement describing the form in which the information is available, a description of what would be required to provide the information in the requested form, and a statement of the estimated cost and time to provide the information in the requested form. Gov't Code § 552.231(a), (b). Once the governmental body provides the statement to the requestor, the governmental body has no obligation to provide the requested information in the requested form until the requestor responds to the governmental body in writing. *Id.* § 552.231(d); *see also* Gov't Code § 552.228 (stating the correct procedures for providing a suitable copy of information to a requestor who seeks information in electronic form).

Section 552.101 exempts from required public disclosure “information that is confidential by law, either constitutional, statutory, or by judicial decision.” Accordingly, section 552.101 encompasses confidentiality provisions such as section 111.006(a)(2) of the Tax Code. Section 111.006(a)(2) provides that information “secured, derived, or obtained by the Comptroller or the attorney general during the course of an examination of 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. Tax Code § 111.006(a)(2).¹ You explain that the dollar amounts at issue were derived from taxpayer reports that were obtained during the course of examinations of the taxpayers’ books, records, papers, officers, or employees. Accordingly, we agree that the requested dollar amounts are confidential under section 111.006(a)(2) as encompassed by section 552.101. Therefore, the comptroller must withhold the requested dollar amounts.

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).

¹Chapter 151 of the Tax Code, which pertains to sales, excise, and use tax, also has a similar confidentiality provision. *See* Tax Code § 151.027(b). Thus, the information made confidential under section 151.027 is co-extensive with information deemed confidential under section 111.006.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 143772

Encl: Submitted documents

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