



November 16, 2001

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

OR2001-5311

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# 154989.

The Comptroller of Public Accounts (the "comptroller") received a request for information relating to pending claims for sales and use tax refunds based on the decision in *Day & Zimmerman, Inc. v. Calvert*.¹ You ask whether Open Records Letter No. 2001-2134 (2001) constitutes a previous determination with respect to this information. We have considered your arguments and have reviewed the documents you submitted.

In Open Records Letter No. 2001-2134 (2001), this office granted the comptroller an exception to disclosure under section 552.103 of the Government Code. We found that the comptroller had shown that the information at issue related to a number of pending *Day & Zimmerman* claims. In concluding that the comptroller could withhold this information under section 552.103, we assumed that all of the parties to all of the pending *Day & Zimmerman* cases had not had access to the information at issue, through discovery or otherwise. You represent to this office that the present request is for information that we held to be excepted from disclosure under section 552.103 in Open Records Letter No. 2001-2134 (2001). You state that the related *Day & Zimmerman* cases referenced in that ruling remain pending. You inform us that the requested information has been obtained by a party to one of the *Day & Zimmerman* cases in the course of discovery. You also inform us, however, that all of the parties to these cases have not had access to the requested information. Having considered your representations and reviewed the documentation you submitted, we conclude that you may continue to withhold the requested information in accordance with Open Records Letter No. 2001-2134 (2001). See Open Records Decision

¹519 S.W.2d 106 (Tex. 1975), *cert. denied*, 423 U.S. 832 (1975).

No. 673 at 6-7 (2001) (explaining that attorney general decision constitutes first type of previous determination under Gov't Code § 552.301(a) where (1) precisely the same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D), (2) same governmental body previously requested and received a ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

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).

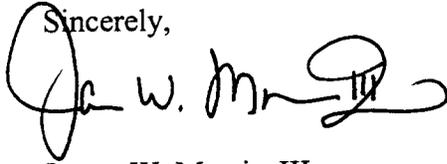
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. 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 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,

A handwritten signature in black ink, appearing to read "J. W. Morris III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 154989

Enc: Submitted documents

c: Mr. Alan E. Sherman
6324 Clear Ridge Drive
Dallas, Texas 75248
(w/o enclosures)