



January 8, 2002

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

OR2002-0137

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# 157074.

The Comptroller of Public Accounts (the "comptroller") received a written request for "the Annual Franchise Tax Reports and any supplemental Public Information Reports filed in 2000 and 2001 by" a certain corporation. You state that the comptroller has "timely provided the requestor with the information that we believe is public."¹ However, you contend that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 171.206 of the Tax Code.

We note at the outset that the only document you submitted to this office as being responsive to the records request is an "Information Report" that the corporation apparently filed with the comptroller pursuant to section 171.204 of the Tax Code. It thus appears to this office that you have not submitted the requested "Annual Reports" contemplated under section 171.202 of the Tax Code.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office within fifteen business days of receipt of an

¹We assume that among the released documents are the requested "Public Information Reports," which are specifically made public under section 171.207 of the Tax Code. If the comptroller has not yet released these documents, it must do so at this time.

information request “a copy of the *specific* information requested, or . . . representative samples of the information if a voluminous amount of information was requested.” Gov’t Code § 552.301(e)(1)(D) (emphasis added). Otherwise, the requested information “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302.

Because you did not submit to this office a copy of the specific information requested, we have no basis on which to conclude that there exists a compelling reason for withholding the requested “Annual Reports.” Consequently, we have no choice but to conclude that the requested “Annual Reports” are presumed to be public under section 552.302 and therefore must be released to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

Furthermore, after reviewing the document you submitted to this office and the records request, we conclude that the submitted document is not responsive to the request. Consequently, we do not address whether the “Information Report” is subject to public disclosure in this instance.

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 Texas Building and Procurement 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/RWP/sdk

Ref: ID# 157074

Enc: Submitted documents

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