OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 31, 2002

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

OR2002-6203

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# 171486.

The Comptroller of Public Accounts (the "comptroller") received eight requests from the same requestor for all of the comptroller's records concerning several specified taxpayers and their businesses. You state that you will release a portion of the responsive information. You also state that you will redact and release pleadings filed by the comptroller's tax division in the context of administrative hearings, relying on Open Records Letter No. 98-2388 (1998) as a previous determination to withhold this information. *See* Open Records Decision No. 673 at 7-8 (2001) (criteria of previous determination for information in specific, clearly delineated categories). Finally, you claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 111.006, 151.027, and 171.206 of the Tax Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1]

Initially, we note that you have not submitted to this office the required documents within the fifteen business day time period as prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Further, section 552.101 can provide a compelling reason for overcoming the presumption of openness. *See* Open Records Decision No. 150 (1977).

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 552.101 encompasses information made confidential by other statutes. 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 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). Chapter 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). Additionally, Chapter 171 of the Tax Code, which pertains to franchise tax, has a similar confidentiality provision. *See* Tax Code § 171.206. Some of the submitted information consists of information that was obtained from the taxpayers in question. Therefore, we conclude that this information is confidential under sections 111.006(a)(2), 151.027, and 171.206 of the Tax Code and must be withheld under section 552.101 of the Government Code.

The remaining submitted documents were generated by the comptroller and not by the taxpayer. However, they contain information obtained from records required to be filed with the comptroller or obtained during the course of an examination of the taxpayer's records for purposes of sections 111.006(a)(2), 151.027, and 171.206, which must be withheld. The comptroller must also withhold the information that identifies the taxpayer pursuant to sections 111.006, 151.027, and 171.206. *See* Attorney General Opinion H-223 (1974).

In summary, we conclude that: 1) you may rely on Open Records Letter No. 98-2388 as a previous determination with regard to pleadings filed by the comptroller's tax division in the context of administrative hearings; and 2) you must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with sections 111.006, 151.027, and 171.206 of the Tax Code. All remaining information must be released.

You ask this office to issue a previous determination ruling regarding taxpayer pleadings filed in the administrative hearing process. We decline to issue such a previous determination ruling at this time.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 171486

Enc: Submitted documents

c: Ms. Sara McCuistion
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(w/o enclosures)