



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 2, 2002

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

OR2002-6851

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# 172958.

The Comptroller of Public Accounts (the "comptroller") received a request for information about three named business entities. You state that you have released to the requestor some of the requested information. You claim, however, that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 151.027 and 171.206 of the Tax Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments.)

You contend that the submitted "Sales Tax Information" is made confidential under section 151.027 of the Tax Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, including information made confidential by statute. Section 151.027(a) provides confidentiality for information collected under the Limited Sales, Excise, and Use Tax Act and reads as follows:

- (a) Information in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection, except for information set forth in a lien filed under this

title or a permit issued under this chapter to a seller and except as provided by Subsection (c) of this section.

This provision prevents the disclosure of information and data obtained or “derived” from a taxpayer’s records. In this instance, you state that the submitted information was required to be furnished by the taxpayer under chapter 151 of the Tax Code. Based on our review of the information at issue as well as your representations, we agree that section 151.027(a) applies, and that none of the exceptions to confidentiality listed in subsection (c) apply. Consequently, we conclude that the “Sales Tax Information” you have submitted to this office for review is confidential pursuant to section 151.027(a) of the Tax Code and must therefore be withheld from the public pursuant to section 552.101 of the Government Code.

You next argue the remainder of the submitted information, submitted as “Franchise Tax Information,” is excepted from required public disclosure under Chapter 171 of the Tax Code. This section provides as follows:

Except as provided by Section 171.207 of this code, the following information is confidential and may not be made open to public inspection:

- (1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or
- (2) information, including information about the business affairs, operations, profits, losses, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed by this chapter.

Tax Code § 171.206. You assert that the remainder of the submitted information was “required to be filed by the taxpayer by Chapter 171 of the Tax Code.” Upon review of the information at issue, we agree that section 171.206 applies. We note that the exceptions to confidentiality that are listed in section 171.207 do not apply. *See* Tax Code § 171.207. Accordingly, the remainder of the submitted information is confidential pursuant to section 171.206 of the Tax Code, and must therefore be withheld from the public pursuant to section 552.101 of the Government Code.

You ask this office to issue a previous determination regarding the “applicability of Sections 151.027 and 171.026 of the Tax Code to information secured, obtained, or derived during an examination and as to information in or derived from a report required to be furnished under Chapters 151 and 171 of the Tax Code.” We decline to issue such a previous determination ruling at this time.

In summary, we conclude that you must withhold from disclosure the submitted information pursuant to section 552.101 of the Government Code in conjunction with sections 151.027 and 171.206 of the Tax Code.

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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/seg

Ref: ID# 172958

Enc: Submitted documents

c: Mr. Mark Littlefield
16060 Forest Hill Drive
Austin, Texas 78745
(w/o enclosures)