



OFFICE of *the* ATTORNEY GENERAL  
GREG ABBOTT

May 30, 2003

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

OR2003-3669

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# 181996.

The Comptroller of Public Accounts (the "comptroller") received a request for information related to gross sales reports for sales at specified liquor stores in 2001, and for the names of all liquor stores shown as reporting outlets in Lamar County for a specified period of time. You state that some responsive information has been provided to the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You contend that the remaining requested 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 indicate that the information at issue consists of information in or derived from a report or other instrument required to be submitted by the taxpayer pursuant to chapter 151 of the Tax Code. You state that aggregate information was provided to the requestor pursuant to the provisions of section 151.027(c). Based upon our review of the submitted documents and your arguments, we conclude that the records at issue are 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.<sup>1</sup>

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

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining argument.

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 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 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

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Enc. Submitted documents

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c: Mr. Jeff Parish  
The Paris News  
P.O. Box 1078  
Paris, Texas 75461-1078  
(w/o enclosures)

Mr. Charles A. Daughtry  
Daughtry, Scott & Jordan, P.C.  
17044 El Camino Real  
Houston, Texas 77058  
(w/o enclosures)