ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2003

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

OR2003-7557

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# 189880.

The Comptroller of Public Accounts (the "comptroller") received a written request for all tax and other records concerning MBO Investments, Inc. You state that some of the responsive information has been released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You state that the information you submitted to this office as responsive to the request consists of franchise tax returns and related correspondence required to be filed with the comptroller pursuant to chapter 171 of the Tax Code. Section 171.206 of the Tax Code 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. Upon review of the information at issue, we agree that section 171.206 applies to the submitted information. We note that the exceptions to confidentiality that are listed in section 171.207 do not appear to apply. *See* Tax Code § 171.207. Accordingly, 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.[1]

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

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[1]As our ruling is dispositive, we need not address your remaining argument.

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,

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 189880

Enc: Submitted documents

c: Mr. David Armstrong
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(w/o enclosures)