ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2004

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

OR2004-0413

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# 194773.

The Comptroller of Public Accounts (the "comptroller") received a request for "cumulative amount of sales tax paid to Lubbock County by [twelve listed] businesses from Oct. 1, 2002 through Sept. 30, 2003." You claim that 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes, including section 151.027 of the Tax Code, which provides in part:

> (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.
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> . . . .
>
> (c) This section does not prohibit:
>
> . . .

> (3) the publication of statistics *classified to prevent the identification* of a particular report or items in a particular report[.]

Tax Code § 151.027(a), (c)(3) (emphasis added). This provision prevents the disclosure of information and data obtained or "derived" from a taxpayer's records.

In this instance, you state that the information at issue "is directly derived from sales tax reports filed with the Comptroller. Sales tax reports and payments are required to be filed with this agency." Having considered your arguments and the information at issue, we find that this information is made confidential by section 151.027(a). You further contend that "because only two taxpayers' information is implicated in this request, the release of the requested information . . . is not a 'publication of statistics' as contemplated by Section 151.027(c)." Based on our consideration of your arguments and the information at issue, we conclude that release of the requested information in this instance is not authorized by section 151.027(c). *Cf.* Tax Code § 321.3022(d) (providing that comptroller may not provide municipality with otherwise releaseable information relating to amount of tax paid to municipality under chapter 321 if information involves "not more than three persons doing business in the defined area who remit taxes . . . unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the municipality"). Therefore, the comptroller must withhold the requested information pursuant to section 552.101 of the Government 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

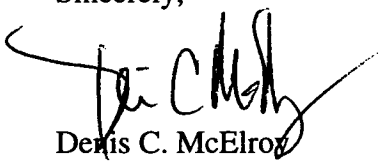
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may 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 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,



Dennis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 194773

Enc. Submitted documents

c: Mr. John Fuquay
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(w/o enclosures)