



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2005

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

OR2005-03363

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222412.

The Comptroller of Public Accounts (the "comptroller") received a request for "lists of Texas top sales tax paying retail businesses." 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.

We begin by noting that some of the information in the submitted records, which includes tax payer identification numbers and reported gross sales, is not responsive to the instant request for information. Because this information, which we have marked, is not encompassed by the request, we do not address it in this ruling. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

We now address your claim under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You contend that the requested information is confidential under section 151.027(a) of the Tax Code. This section 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.

Tax Code § 151.027(a). This provision excepts from public disclosure information and data obtained or “derived” from a taxpayer’s records. In this instance, you indicate that the submitted list consists of information in or derived from a report or other instrument required to be submitted by the taxpayers pursuant to chapter 151 of the Tax Code. Upon review, however, we find that because a list limited to the names of “top sales tax paying retail businesses” encompasses a large range of amounts of sales taxes paid, the responsive information does not reveal the amounts derived from any individual taxpayer’s records. As such, we determine that the requested information is not made confidential by section 151.027(a) of the Tax Code, and it may not be withheld under section 552.101 on that basis. As you raise no other exceptions to disclosure, we conclude that the requested information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 222412

Enc. Submitted documents

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(w/o enclosures)