



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2005

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

OR2005-08632

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# 232826.

The Comptroller of Public Accounts (the "comptroller") received a request for statistical information related to franchise taxpayers, including taxpayer name, number, and ratios of gross receipts to total sales and net taxable sales. 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 representative sample of information.<sup>1</sup>

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. You assert that the responsive information is made confidential by sections 151.027 and 171.206 of the Tax Code.

Sections 151.027 and 171.206 of the Tax Code make confidential information that is obtained or derived from taxpayer records relating to sales and use taxes and franchise taxes.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 151.027(a) provides that, with certain exceptions, “[i]nformation 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.” *Id.* § 151.027(a). Section 171.206(1) provides for the confidentiality of “information that is obtained from a record or other instrument that is required under this Chapter to be filed with the comptroller.” *Id.* § 171.206(1).

You state that the requested information “is derived from required reports and specific categories of reported information within those reports.” You assert that none of the exceptions to confidentiality listed in section 151.027(c) or section 171.207 applies. *See id.* §§ 151.027, 171.206. Upon review of your representations and the submitted information, we find that the information at issue is confidential under sections 151.027(a) and 171.206 of the Tax Code, and therefore must be withheld under 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, 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); *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 Office of the Attorney General 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. 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/jpa

Ref: ID# 232826

Enc. Submitted documents

c: Mr. Stuart Greenfield  
3029 Thrushwood Drive  
Austin, Texas 78757  
(w/o enclosures)