



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2006

Mr. Joseph T. Longoria  
Perdue Brandon Fielder Collins & Mott LLP  
Attorney for Bexar Appraisal District  
1235 North Loop West, Suite 600  
Houston, Texas 77008

OR2006-11885

Dear Mr. Longoria:

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# 261808.

The Bexar County Appraisal District (the "district"), which you represent, received one request for "Dealer's Motor Vehicle Inventory Declarations and Dealer's Motor Vehicle Inventory Tax Statements" for a specified business from 2003 to 2006 and another request for the "Special Inventory Tax Statements" for another named business from September of 2003 to December of 2005. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business

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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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The district received the first request for information on July 24, 2006, but did not submit information responsive to this request until August 17, 2006. Thus, the district failed to comply with the procedural requirements mandated by section 552.301 for this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App. —Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires you to withhold the submitted information.

You assert that the submitted information is excepted under section 552.101 of the Texas Government Code in conjunction with sections 22.27 and 23.123 of the Texas Tax Code. *See* Tax Code §§ 22.27 (addressing confidentiality of certain rendition statements), 23.123 (addressing confidentiality of declarations of a dealer's motor vehicle inventory). We note, however, that the requestors are special agents of the Internal Revenue Service (the "IRS") who, you inform us, are involved with the local district attorney in an investigation. Section 7602 of title 26 of the United States Code gives the IRS a special right of access to certain information. Specifically, pursuant to section 7602, the Secretary of the Treasury is authorized to "examine any books, papers, or other data which may be relevant or material" to a particular tax inquiry for the purpose of "inquiring into any offense connected with the administration or enforcement of the internal revenue laws." *See* 26 U.S.C. § 7602(a), (b). Under the supremacy clause of the United States Constitution, federal law prevails over state law. U.S. Const. Art. I, § 8, cl. 18. Therefore, the requestors have a right of access to the submitted information pursuant to federal law. Accordingly, the district may not withhold the submitted information under section 552.101 of the Texas Government Code in conjunction with section 22.27 or 23.123 of the Texas Tax Code, but instead must release it to the requestors pursuant to section 7602 of title 26 of the United States 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).

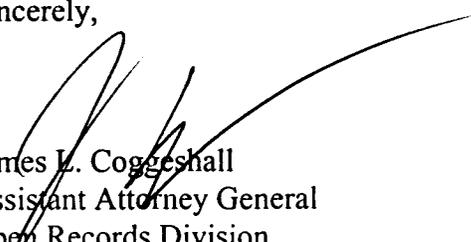
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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. 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eB

Ref: ID# 261808

Enc. Submitted documents

c: Mr. Jason Gamez and  
Mr. Joe Vigil  
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(w/o enclosures)