



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2006

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

OR2006-13527

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# 264723.

The Comptroller of Public Accounts (the "comptroller") received a request for information relating to restaurants or bar and grills in Austin, San Antonio, Round Rock, or San Marcos with annual revenues between \$840,000 and \$1,200,000. 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." 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. The responsive information consists of a list containing the name, address, city, zip code, and tax number of businesses falling within the requested criteria. 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 the list encompasses a large range of annual revenues, the responsive information does not reveal the actual revenue 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).

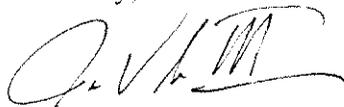
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read 'José Vela III', written in a cursive style.

José Vela III
Assistant Attorney General
Open Records Division

JV/eb

Ref: ID# 264723

Enc. Submitted documents

c: Mr. Ruben D. Cuero
623 Mission Street
San Antonio, Texas 78210
(w/o enclosures)