



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2014

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

OR2014-18370

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# 539291 (Comptroller ID #10600225058).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for a list of all entities who file Form 05-169 for Texas franchise tax purposes. You claim 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.¹

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 protected by other statutes, including section 171.206 of the Tax Code. Section 171.206 of the Tax Code provides the following information collected under the Franchise Tax Act is generally excepted from disclosure:

¹We 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.

(1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or

(2) information, including information about the business affairs, operations, profits, losses, cost of goods sold, compensation, or expenditures of a taxable entity, obtained by an examination of the books and records, officers, partners, trustees, agents, or employees of a taxable entity on which a tax is imposed by this chapter.

Tax Code § 171.206. The Supreme Court of Texas addressed the applicability of section 171.206 of the Tax Code to information requested under the Act in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995), stating:

The Tax Code prevents the disclosure of data “obtained” or “derived” from a taxpayer . . . Confidentiality under the Tax Code thus turns on the identity of the *source* of the information. It makes confidential the information obtained or derived from *taxpayers*.

Id. at 676 (citations omitted) (emphasis in original). The court concluded that:

[T]he amounts of assessed deficiencies, refunds, or credits are derived from taxpayer-furnished information, and are thus confidential . . . [and] it strikes the proper balance between the Tax Code and [the Act] for the comptroller to disclose that audits resulted in a deficiency assessment or refund warrant, but not to disclose the amounts of an assessment or refund.

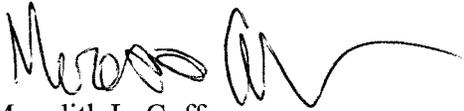
Id. at 680 (citations omitted). Accordingly, section 171.206 excepts from public disclosure information and data obtained or “derived” from a taxpayer’s records. You argue the submitted list is confidential under section 171.206 because it reveals information regarding the business affairs and financial condition of taxpayers who have filed a Form 05-169. We find a Form 05-169 is required to be filed by certain franchise taxpayers pursuant to chapter 171 of the Tax Code. Based on your representations and our review, we find the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 171.206 of the Tax Code.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 539291

Enc. Submitted documents

c: Requestor
(w/o enclosures)