



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 5, 2015

Mr. James G. Nolan
Associate Deputy General Counsel
Open Records Division
Texas Comptroller Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2015-11084

Dear Mr. Nolan:

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# 566334 (Comptroller ID Nos. 11322453358 & 11433044988).

The Texas Comptroller of Public Accounts (the "comptroller's office") received two requests from separate requestors for a list of (1) all taxable entities that were denied or disallowed temporary credits for a specified reason during 2008 through 2014 and (2) all taxpayers who were issued a Form 05-293-B during 2009 through 2015. You claim the submitted 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 samples 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

¹We assume 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.

section 171.206 of the Tax Code, which provides the following information collected under the Franchise Tax Act is confidential:

- (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 state the submitted lists are confidential under section 171.206 because they consist of information compiled from tax reports that were required to be reported by franchise taxpayers pursuant to chapter 171 of the Tax Code. Based on your representations and our review, we find the comptroller’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 171.206 of the Tax Code.

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.

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 cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/som

Ref: ID# 566334

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)