



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 1, 2016

Ms. Kristen Lee  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2016-19860

Dear Ms. Lee:

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# 625185 (C.A. File No. 16PIA0355).

The Harris County Tax Assessor-Collector (the "county") received a request for the "Monthly Dealer's Motor Vehicle Inventory Tax Statements" of three named dealerships for a specified period of time. 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 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 protected by other statutes, such as section 23.123 of the Tax Code, which provides in relevant part:

(a) In this section:

...

(4) "Declaration" has the meaning given it in Section 23.122 of this code.

...

(6) "Statement" has the meaning given it in Section 23.122 of this code.

(b) Except as provided by this section, a declaration or statement filed with a chief appraiser or collector as required by Section 23.121 or Section 23.122 of this code is confidential and not open to public inspection. A declaration or statement and the information contained in either may not be disclosed to anyone except an employee of the appraisal office who appraises the property or to an employee of the county tax assessor-collector involved in the maintenance of the owner's escrow account.

(c) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the declaration or statement or to that person's representative authorized by the person in writing to receive the information;

(3) to the comptroller or an employee of the comptroller authorized by the comptroller to receive the information;

(4) to a collector or chief appraiser;

(5) to a district attorney, criminal district attorney or county attorney involved in the enforcement of a penalty imposed pursuant to Section 23.121 or Section 23.122;

(6) for statistical purposes if in a form that does not identify specific property or a specific property owner;

(7) if and to the extent that the information is required for inclusion in a public document or record that the appraisal or collection office is required by law to prepare or maintain; or

(8) to the Texas Department of Motor Vehicles for use by that department in auditing compliance of its licensees with appropriate provisions of applicable law.

Tax Code § 23.123(a)(4), (a)(6), (b), (c). To reiterate, section 23.123(a) provides the terms “declaration” and “statement” have the meanings given to those terms in section 23.122 of the Tax Code. We note that section 23.122(a)(5) of the Tax Code states “[d]eclaration” has the meaning given it in Section 23.121.” *Id.* § 23.122(a)(5). Section 23.121(a)(6) defines “declaration” as the Dealer’s Motor Vehicle Inventory Declaration form required by section 23.121. *Id.* § 23.121(a)(6), (f). Further, section 23.122(a)(9) of the Tax Code defines “statement” as the Dealer’s Motor Vehicle Inventory Tax Statement required by section 23.122. *Id.* § 23.122(a)(9), (e), (f). You indicate, and the information at issue reflects, Exhibit B consists of Dealer’s Motor Vehicle Inventory Tax Statements as defined by section 23.122 that were submitted to the county pursuant to section 23.122 of the Tax Code. Accordingly, we find Exhibit B is confidential pursuant to section 23.123(b) of the Tax Code and must generally be withheld from disclosure under section 552.101 of the Government Code.

However, the requestor is an investigator with the Internal Revenue Service (the “IRS”) and states she is requesting the information at issue pursuant to an ongoing 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)(1), (b). Therefore, under federal law, the requestor has a right of access to the information at issue.

Thus, there is a conflict between the requestor’s right of access under section 7602 of title 26 of the United States Code and the confidentiality requirements in section 23.123 of the Tax Code. As federal law, section 7602 of title 26 preempts any conflicting state provisions, including section 23.123 of the Tax Code. *See English v. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation); *see also* U.S. Const. art. VI, cl. 2 (Supremacy Clause); *Delta Airlines, Inc. v. Black*, 116 S.W.3d 745, 748 (Tex. 2003) (discussing federal preemption of state law). Thus, although the submitted information is confidential 23.123 of the Tax Code, the requestor’s right of access under federal law preempts the state statute. Accordingly, the county may not withhold the submitted information under section 552.101 of the Texas Government Code in conjunction with section 23.123 of the Tax Code, but instead must release it to the requestor pursuant to section 7602 of title 26 of the United States Code.<sup>1</sup>

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<sup>1</sup>Because this requestor has a special right of access to information being released, in the event the county receives another request for this information from someone without such a right of access, the county must against ask this office for a ruling.

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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bw

Ref: ID# 625185

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)