OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 21, 2000

Ms. Ruth H. Soucy
Manager, Open Records Division
Comptroller of Public Accounts
Post Office Box 13528
Austin, Texas 78711-3528

OR2000-3661

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139333.

The Comptroller of Public Accounts (the "comptroller") received a request for a listing of business owners by name, address, and amount owed for all business owners in Houston who owe more than five thousand dollars in delinquent sales tax. 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 representative samples of information.[1]

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as sections 151.027 and 111.006 of the Tax Code. Chapter 111 of the Tax Code pertains to the collection of taxes. Section 111.006 provides in relevant part:

> (a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted by this section:

[1]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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

> . . .
>
> (2) all information secured, derived, or obtained by the comptroller . . . during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

Tax Code § 111.006(a)(2). Chapter 151 of the Tax Code pertains to sales, excise, and use taxes. Section 151.027 provides in relevant part:

> (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[.]
>
> (b) Information secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees, including the business affairs, operations, profits, losses, and expenditures of the taxpayer, is confidential and not open to public inspection[.]

Tax Code § 151.027(a), (b).

In this instance, we find that the requested information constitutes information that is derived from the taxpayers' records provided to the comptroller. Furthermore, we find that the exceptions to section 151.027(a) and 111.006(a)(2) are inapplicable. Therefore, we conclude that the requested information is confidential under sections 151.027(a) and 111.006(a)(2) of the Tax Code. Accordingly, the comptroller must withhold the requested information pursuant to section 552.101 in conjunction with sections 151.027(a) and 111.006(a)(2) of the Tax 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 the General Services Commission 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,

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 139333

Encl. Submitted documents

cc: Ms. Jocelyn Lane
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(w/o enclosures)