



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 5, 1998

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
Office of the City Attorney
P.O. Box 152288
Irving, Texas 75015-2288

OR98-1410

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115576.

The City of Irving (the "city") received a request for copies of the quarterly hotel occupancy tax report forms for the year of 1997 for certain hotels in Las Colinas. You argue, however, that certain information contained in the requested forms is exempted from disclosure by section 552.101 of the Government Code in conjunction with sections 111.006, 151.027, and 171.206 of the Tax Code. We have considered the exceptions you claim and have reviewed the information that you have submitted. The forms at issue appear to be from persons owning, operating, managing, or controlling hotels, which are submitted to the city for payment of the municipal tax based on the hotel's gross receipts.¹

Section 552.101 of the Government Code exempts from required public disclosure information that is confidential by law, including information made confidential by statute.

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 No. 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 that submitted to this office.

You raise section 111.006 of the Tax Code as applicable to the information at issue. However, section 111.006 of the Tax Code pertains to federal income tax return information required to be submitted to the comptroller with a state tax return or report as well as all information secured, derived or obtained by the comptroller or the attorney general 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. You have not explained how this particular provision is applicable to the information at issue. The information may not be withheld under this provision.

We next examine section 151.027 of the Tax Code which provides:

(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.

(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 except as provided by Subsection (c) of this section.

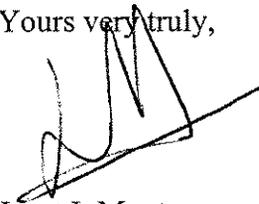
It does not appear that the information at issue is derived from taxpayer reports required to be furnished under chapter 151. Additionally, no information is presented to this office which would place this information within the ambit of section 151.027(b) of the Tax Code as information secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees.

Section 171.207 of the Tax Code pertains to franchise taxes and provides for the confidentiality of information obtained from a record or other instrument that is required by under franchise chapter provisions to be filed with the comptroller. Additionally it provides for the confidentiality of information if it constitutes franchise tax information, including information about the business affairs, operations, profits, losses, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed under the franchise provisions of the Tax Code. You have not explained to this office how the information at issue in the instant case pertains to franchise taxes and thus would be subject to the foregoing franchise provisions of the Tax Code. Consequently, you may not withhold the information at issue under section 171.026 of the Tax Code. In conclusion, the cited statutes apply to state taxation while the submitted information appears to be a municipal tax report to which these provision do not apply, including chapter 156 of the Tax Code which deals with hotel occupancy taxes.

Accordingly, you may not withhold the information at issue under the cited statutes and must release that information to the requestor.

We are resolving this issue with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 115576

Enclosure: Submitted document

cc: Mr. Bipin B. Patel
7424 Bradford Pear Drive
Irving, Texas 75063
(w/o enclosures)