



January 12, 2000

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

OR2000-0108

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 131181.

The Comptroller of Public Accounts (the "comptroller") received a written request for "information concerning the State's determination that the Biodynamic Research Corporation provides services which are 'taxable insurance services' under the Texas Tax Code." You have submitted to this office the records at issue, which you contend are made confidential under section 111.006(a)(2) of the Tax Code and, therefore, must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 111.006(a)(2) of the Tax Code provides that 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" is confidential. Tax Code § 111.006(a)(2).

Although this office has determined that "position letters" and administrative hearing decisions must be released to the public with the identity of the taxpayer redacted, all supporting documents or other information provided to the comptroller by the taxpayer must be withheld from the public pursuant to section 111.006(a)(2) of the Tax Code. *See* Open Records Letter No. 97-0295 (1997). After reviewing the information at issue, we agree that much of the information contained in the records at issue is made confidential under section 111.006(a)(2). We have marked the information that the comptroller must withhold pursuant

to section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code.¹ The remaining information contained in these documents must be released.

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).

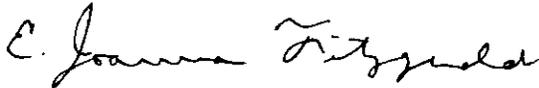
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

¹Although the requestor alleges that the comptroller in fact did not request a decision from this office within the required ten business days following its receipt of the request, *see* Gov't Code §§ 552.301, .302, the resulting presumption that the requested information is public would be overcome by the demonstration of the applicability of section 552.101. Open Records Decision No. 150 (1977). Consequently, we need not reach at this time the issue of the timeliness of your request to this office.

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,

A handwritten signature in black ink that reads "E. Joanna Fitzgerald". The signature is written in a cursive style with a large initial "E" and a decorative flourish at the end.

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/RWP/nc

Ref.: ID# 131181

Encl. Marked documents

cc: Mr. Thomas J. Mosele
Franklin, Mosele & Walker
4200 Westheimer, Suite 130
Houston, Texas 77027
(w/o enclosures)