



May 11, 2000

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR2000-1847

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135378.

The City of Dallas (the “city”) received a request for “all documents and materials relating to the Compucom Sales Tax Special Revenue fund, including, but not limited to Compucom reports of sales tax revenue to the [city] and payments to Compucom by the [city] under the grant agreement.” You explain that the city has “not yet made any payments to Compucom” under the grant agreement and that the city therefore “does not *possess*” information that is responsive to that portion of the request (emphasis added).¹ You further explain that the city has provided to the requestor information that is responsive to the request, with the exception of certain “sales tax reports.” You have provided for our review a representative sample of the “sales tax reports” at issue, which you indicate may be excepted from disclosure under

¹It is implicit in several provisions of the Public Information Act (the “Act”) that the Act applies only to information already in existence. See Gov’t Code §§ 552.002, .021, .227, .351. Thus, the Act does not require a governmental body to prepare new information in response to a request. Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). Nor does the Act require a governmental body to inform a requestor if the requested information comes into existence after the request has been made. Open Records Decision no. 452 at 3 (1986). However, we note that “public information” for purposes of the Act includes not only information that the city *possesses*, but also information that the city owns or to which the city has a right of access. Gov’t Code § 552.002. This open records letter thus assumes that except for the information submitted for our review, the information that the city has made available to the requestor is the totality of the information that is responsive to the request, and which the city owns or to which the city has a right of access. See Open Records Decision No. 561 at 8 (1990) (a governmental body must make a good faith effort to relate a request to information which it holds). This open records letter does not address the issue of whether information held by Compucom which the city does not own or to which the city does not have a right of access, constitutes information that is subject to the Act.

section 552.110 of the Government Code.² You make no arguments in support of this exception. However, you have notified Compucom Systems, Inc. ("Compucom") of the request by a letter dated March 15, 2000, in compliance with section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Compucom responded to the notice, and asserts that a number of documents Compucom has provided to the city are excepted from disclosure by sections 552.101 and 552.110 of the Government Code.³

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In pertinent part, section 151.027 of the Tax Code states:

- (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.

Tax Code § 151.027(a). Absent exceptions to confidentiality that are not applicable in this instance, the above provision makes confidential certain information relating to taxpayers and required to be furnished to the Office of the Comptroller. *See* Open Records Decision No. 624 (1994); Tax Code § 151.027(c). Compucom represents to this office that the reports at issue "include and are based on information in and derived from reports furnished to the [comptroller] as required by Chapter 151 of the Texas Tax Code." Based on this representation, we agree that the information is confidential and must not be released pursuant to section 552.101 in conjunction with section 151.027 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.

²This open records letter is limited to the representative sample of documents that were submitted for our review. We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole that have been withheld from the requestor. *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.

³In its correspondence to this office, Compucom identifies nine categories of documents which Compucom asserts are excepted from disclosure. However, as noted above, the city indicates it has made available to the requestor all of the information the city has that is responsive to the request, except for the information that the city has submitted for our review (that is, the representative sample of "sales tax reports").

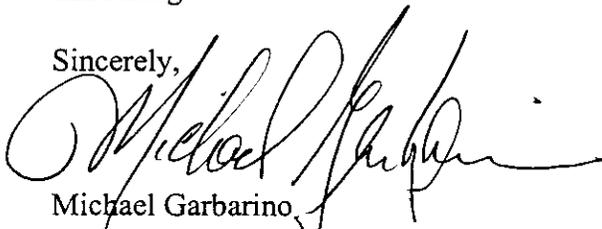
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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).

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 135378

Encl. Submitted documents

cc: Ms. Sherry Fincher Via Facsimile: (972) 231-8291
(w/o enclosures)

cc: Mr. Robert B. Gilbreath
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(w/o enclosures)