



June 21, 2000

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
Post Office Box 13528
Austin, Texas 78711-3528

OR2000-2374

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# 136365.

The Comptroller of Public Accounts (the "comptroller") received a request for payment schedules related to a particular taxpayer. You claim that the information is excepted from disclosure under sections 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The comptroller did not provide this office with a signed statement or other evidence sufficient to establish when the comptroller received the request for information. Gov't Code § 552.301(e). The request for information is dated February 25, 2000. Assuming the comptroller received the request on that date, you were required by section 552.301 to seek a decision from this office no later than March 10, 2000, the tenth business day after the district received the request for information. In this case, this office did not receive the

request for a decision until April 18, 2000, more than the 10 business day period mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In the absence of a demonstration that the requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). The applicability of section 552.101 of the Government Code provides a compelling reason sufficient to overcome the presumption that the submitted information is public.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that portions of the submitted information are excepted from disclosure under section 552.101 in conjunction with sections 111.006 and 151.027 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:

...

(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).

You state that portions of the submitted information were "obtained during an examination and also from reports required to be furnished under chapter 151 of the Tax Code." You

assert that the information relating to the examination is protected under sections 111.006 and 151.027 of the Tax Code. Based on your representations and our review of the submitted information, we agree that you must withhold from disclosure portions of the submitted information under section 552.101 of the Government Code in conjunction with sections 111.006 and 151.027 of the Tax Code.¹

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).

¹You ask whether the comptroller may rely upon prior rulings concerning the application of the confidentiality provisions of chapters 111 and 151 of the Tax Code. We inform you that the prior rulings of this office regarding sections 111.006 and 151.027 of the Tax Code may not be relied upon as previous determinations. See Gov't Code § 552.301(a).

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 cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 136365

Encl. Submitted documents

cc: Ms. Joie Lagios
10400 Hammerly Boulevard
Houston, Texas 77043
(w/o enclosures)