OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

July 31, 2000

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government Division
Comptroller Of Public Accounts
P. O. Box 13528
Austin, Texas 78711-3528

OR2000-2878

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# 137531.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for various information relating to the requestor's employment probation and termination. You explain that some of the requested information will be provided to the requestor, but you claim that the remaining portion of the information is excepted from disclosure under Government Code section 552.101 in conjunction with section 111.006 of the Tax Code, and also pursuant to section 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that a portion of the submitted information is excepted from public disclosure under Government Code section 552.107. Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *See* Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *See* Open Records Decision No. 574 at 3 (1990). In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We agree that some of the information you have marked is excepted from disclosure under subsection 552.107(1) as confidential client communications or an attorney's legal advice. We have marked the information that the comptroller may withhold pursuant to this section.

You argue that a portion of the submitted information is excepted from public disclosure pursuant to Government Code section 552.101 in conjunction with subsection 111.006(a)(2) of the Tax Code. 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. Section 111.006 of the Tax Code makes certain information related to tax examinations confidential. Subsection 111.006(a)(2) 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).[1] We agree that some of the information you have marked is confidential under subsection 111.006(a)(2). For your reference, we have marked the information that must be withheld pursuant to section 552.101 in conjunction with section 111.006. The remaining information must be released to the requestor.

In summary, portions of the submitted information are excepted from public disclosure pursuant to sections 552.101 and 552.107 of the Government Code. The remaining information is not excepted and must be released to the requestor.

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

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[1]Chapter 151 of the Tax Code, which pertains to sales, excise, and use tax, also has a similar confidentiality provision. *See* Tax Code § 151.027(b). Thus, the information made confidential under section 151.027 is co-extensive with information deemed confidential under section 111.006.

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,

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 137531

Encl. Submitted documents

cc: Mr. Jose Landaverde
4800 Lamonte, #1613
Houston, Texas 77092
(w/o enclosures)