



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS
JOHN CORNYN

August 15, 2000

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

OR2000-3107

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# 138180.

The Comptroller of Public Accounts (the "comptroller") received a request for redacted copies of the proposed decision, the Tax Division's and the taxpayer's pleadings pertaining to hearing number 38,973. You state you have released to the requestor redacted copies of the proposed decision and the Tax Division's filed pleadings. You state this instant request pertains to the taxpayer's pleadings submitted in hearing number 38,973. You claim that the taxpayer's pleadings are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. You state that the comptroller received the requestor's written request for information on May 26, 2000. You did not request a decision from this office until June 16, 2000, more than ten business days after the comptroller's receipt of the requestor's written request. Therefore, we conclude that the comptroller failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. -- Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.-- Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Here, section 552.101 presents a compelling reason to overcome the presumption of openness.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Section 552.101 encompasses confidentiality provisions such as section 111.006 of the Tax Code. Section 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 book, 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).

After reviewing the submitted documents, we find that the taxpayer’s pleadings are confidential under section 111.006(a)(2). See *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 688, 676, 679) (Tex. 1995) (because the taxpayer is the source of the information, a taxpayer’s response to an audit is confidential under section 111.006(a)(2) of the Tax Code). Accordingly, these documents in their entirety are confidential pursuant to section 552.101 in conjunction with section 111.006(a)(2) of the Tax Code.

However, we note that the comptroller raises the issue of whether section 111.006(c) of the Tax Code is applicable to allow release of de-identified taxpayer’s pleadings in the context of a public information request. Section 111.006(c) states that the comptroller or the attorney general may authorize the use of information otherwise made confidential by section 111.006 of the Tax Code in administrative or judicial proceedings in which this state, another state, or the federal government is a party. We note that the requestor submitted a letter to this office that clearly indicates the requestor wants the pleadings for use in an administrative proceeding in which the state is a party. Thus, under section 111.006(c), the comptroller has the discretion to allow the use of this otherwise confidential information in this instance.

Finally, we note that the requestor asks this office if the requestor has the right to review the taxpayer’s pleadings in the event the Comptroller’s Assistant General Counsel asks the Administrative Law Judge (the “ALJ”) to review the taxpayer’s pleadings or asks the ALJ to take judicial notice of the taxpayer’s pleadings. We conclude that this question does not fall within the purview of the Public Information Act, but must be determined by the ALJ under the Administrative Procedures Act.

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

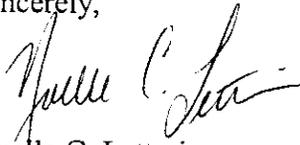
general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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).

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,



Noelle C. Letteri
Assistant Attorney General
Open Records Division
NCL/pr

Ref: ID# 138180

Encl. Submitted documents

cc: Mr. Mark Weiss
Ryan & Company
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(w/o enclosures)