



September 21, 2000

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

OR2000-3663

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# 140688.

The Comptroller of Public Accounts (the "comptroller") received two requests for lists of outstanding warrants issued during specified periods. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.

You relate that you received the first request for information on August 2, 2000. However, the comptroller did not submit a request for decision to this office regarding that request for information until August 25, 2000. A governmental body must request a decision from this office within 10 business days of receiving a request for information. Gov't Code § 552.301(e). If the governmental body fails to comply with section 552.301, 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 Publishing 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.* A compelling reason is demonstrated where the information is confidential or involves the rights of third parties. As you did not comply with section 552.301(e) of the Government Code the responsive information is presumed subject to public disclosure. We also note that all information responsive to this request must be released unless it is expressly made confidential by law. *See* Gov't Code § 552.022(a)(3). You contend that the information is made confidential by statute. We shall therefore address your argument for withholding the responsive information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information made confidential by statutes. The submitted materials identify certain line items as “Franchise Tax.” Sections 171.207 and 111.006 of the Tax Code have been interpreted by the Texas Supreme Court to require the comptroller to disclose the fact that audits resulted in a deficiency assessment or refund warrant, but not to disclose the amounts of such assessments or refunds. *A & T Consultants, Inc. v. Sharp*, 904 S.W. 2d 668, 680-81 (Tex. 1995). The dollar amounts of franchise tax refund warrants are therefore confidential. The submitted information that designates these amounts must be withheld under section 552.101 of the Government Code.

We are aware that the comptroller issues several types of warrants that are subject to confidentiality provisions. However, we are unable to determine from your comments or our review of the submitted materials, whether any of the submitted information other than that relating to franchise tax warrants is confidential. The comptroller must contact the individual state agencies, make those determinations, and withhold or release the information accordingly.

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).

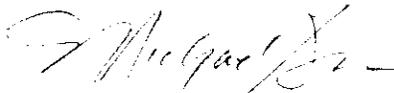
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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 Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 140688

Encl: Submitted documents

cc: Mr. Michael Carlucci  
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793 Washington Street  
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(w/o enclosures)