



November 7, 2000

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

OR2000-4342

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# 141012.

The Comptroller of Public Accounts (the "comptroller") received a request for a research file pertaining to vehicle taxes paid by a specified individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that section 552.101 in conjunction with section 730.004 of the Transportation Code excepts the requested 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 protected by statute. Section 730.004 of the Transportation Code provides:

Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005 – 730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

(1) "Agency" includes any agency of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include a record that pertains to a motor carrier.

Transp. Code § 730.003(1), (4). You explain that the requested information was obtained through a database maintained by the Texas Department of Transportation ("TXDOT") to which the comptroller has been granted access for research and enforcement purposes. *See* Transp. Code § 502.008(c) (providing that TXDOT shall provide access to its vehicle registration records database for use by other state agencies). However, section 730.004 only applies to an "agency" that compiles or maintains motor vehicle records. *See* Transp. Code § 730.003(1). We do not believe that the comptroller compiles or maintains motor vehicle records and, therefore, section 730.004 does not apply to the comptroller. Accordingly, the requested information may not be withheld under section 552.101 in conjunction with section 730.004 of the Transportation Code.

You also contend that the requested information is excepted under section 552.101 in conjunction with section 111.006 of the Tax Code. Section 111.006 of the Tax Code makes certain information related to tax examinations confidential. Section 111.006 provides:

(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 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.

In determining the application of this statute to information requested under chapter 552 of the Government Code, we must determine the source of the information. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995). Information obtained or derived from a taxpayer in the course of an audit is made confidential by this statute; information otherwise obtained is not. *Id.* Because you explain that the requested information was obtained from TXDOT, we conclude that section 111.006 does not apply to the requested information and, therefore, the requested information may not be withheld under section 552.101.

However, the comptroller must withhold information excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the marked license plate numbers and VIN numbers under section 552.130(a) of the Government Code.

In conclusion, you may withhold the marked information under section 552.130. Having found that section 730.004 of the Transportation Code and section 111.006 of the Tax Code do not apply to the requested information, you must release the remaining information.

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB\er

Ref: ID# 141012

Encl: Marked documents

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(w/o enclosures)