OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 13, 2000

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

OR2000-4693

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# 142175.

The Comptroller of Public Accounts (the "comptroller") received a written request for "[a]ll Comptroller decisions or Comptroller decisions on rehearing" and "[a]ll motions to dismiss" with respect to certain identified hearing numbers. You indicate that the requested comptroller decisions have been provided to the requestor with certain information redacted pursuant to section 111.006 of the Tax Code in accordance with Open Records Letter No. 98-2388 (1998). You inquire, however, whether the identity of the taxpayers' representatives contained in the requested documents, as well as joint "agreed motions to dismiss," must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 111.006. You have submitted to our office representative samples of the documents at issue.[1]

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 111.006(a)(2) of the Tax Code 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

[1]In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential.

Although this office has determined that all supporting documents or other information provided to the comptroller by or on behalf of the taxpayer must be withheld from the public pursuant to section 111.006(a)(2) of the Tax Code, "private letter rulings" and administrative hearing decisions must be released to the public with the identity of the taxpayer redacted. You explain that the requested "agreed motions to dismiss" are filed jointly by the taxpayer and the comptroller's Tax Division. After reviewing the "Agreed Motion to Dismiss" submitted to this office, we believe that it would impermissibly extend the scope and purpose of section 111.006(a)(2) to broadly apply this provision to a motion that also consists of a Tax Division's filings during an administrative hearing. We therefore conclude that the agreed motions must be released to the requestor, but with the identity of the taxpayer and other taxpayer information redacted. We have marked the information in the agreed motion that the comptroller must withhold pursuant to section 111.006(a)(2); the remaining information contained therein must be released to the requestor.

We next address whether the identity of the taxpayer's representative must be withheld from the public pursuant to section 111.006(a)(2). You bring to our attention the fact that this office has previously held that the identity of a taxpayer's representative must be withheld from the public. However, the only purpose for withholding the representative's identity under section 111.006(a)(2) would be to protect the identity of the taxpayer. Thus, we have previously concluded that the identity of the representative must be withheld pursuant to section 111.006(a)(2) in those situations where this office has been informed that the release of the representative's identity would necessarily reveal the identity of the taxpayer. On the other hand, absent such a representation, this office has no basis on which to conclude that such would be the case. In fact, prior rulings of this office have concluded that the identity of the taxpayer's attorney is not confidential under section 111.006(a)(2). In this instance, you have not provided this office with any information to suggest that the release of the identities of the taxpayers' representatives would directly reveal the identities of the respective taxpayers. We therefore conclude that in this instance the comptroller must release to the requestor each of the representatives' identities contained in the agreed motions to dismiss.

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).

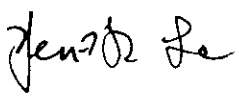
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/seg

Ref: ID# 142175

Encl. Marked documents

cc: Mr. Richard J. Langenstein
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(w/o enclosures)