Office of the Attorney General · State of Texas
John Cornyn

December 29, 2000

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

OR2000-4914

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# 144058.

The Comptroller of Public Accounts (the "comptroller") received a request for "all the audits in progress and completed within [the] last six months for all state taxes except franchise tax." You indicate that you have released the public portion of the requested information. You assert that the information pertaining to pending audits in which the taxpayer has not been notified is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

We find that your request is answered by our decision in Open Records Letter No. 2000-4762 (2000). In that decision, this office found that the precise information at issue in the present request is excepted from disclosure under section 552.108. The decision further concluded:

> With regard to future requests to the comptroller for "a list of current sales tax audits" and the responsive information concerns pending audits where the

[1]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 Nos. 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.

previous determination under section 552.301(a) of the Government Code and need not request determinations from this office.

Accordingly, the comptroller may withhold the information pursuant to the previous determination in ORL 2000-4762 (2000).

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).

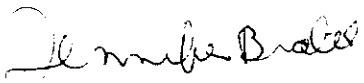
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/

Ref: ID# 144058

Encl. Submitted documents

cc: Mr. Kevin Herrington
P. O. Box 2900063
Kerrville, Texas 78029
(w/o enclosures)