



June 20, 2001

Mr. Sam Haddad
Assistant General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2001-2633

Dear Mr. Haddad:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148592.

The Comptroller of Public Accounts (the "comptroller") received a request for:

1. All settlement agreements entered into between the comptroller's office and taxpayers between January 1, 1999 and March 31, 2001, in accordance with Chapters 111.101, 111.102, 111.104 and 111.1042 (informal review) of the Tax Code; and
2. All joint motions to dismiss an administrative hearing that resulted in a refund [from January 1, 1999 and March 31, 2001].

You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with certain confidentiality statutes. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered the comments submitted to this office on behalf of the requestor. *See Gov't Code § 552.304.*

¹ We assume that the "representative samples" of records submitted to this office are 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.

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 other statutes. You contend that the requested settlement agreements are excepted in their entirety under section 552.101 in conjunction with one of three raised statutes, section 111.006 of the Tax Code, section 154.073 of the Civil Practice and Remedies Code, and section 2009.054 of the Government Code.² We initially note that a final settlement agreement to which a governmental body is a party is subject to required public disclosure under section 552.022(a)(18) of the Government Code. Section 552.022(a) of the Government Code provides that this information is not excepted from required disclosure under the Act unless the information is expressly confidential under other law. You maintain that the three statutes you raise are “other law” that make the settlement agreements confidential. Section 154.073(d) of the Civil Practices and Remedies Code states that a governmental body’s final settlement agreement reached as a result of a dispute resolution procedure is subject to or excepted from required disclosure in accordance with Chapter 552 of the Government Code. Therefore, the settlement agreements are not confidential under section 154.073 of the Civil Practice and Remedies Code. Similarly, subsection (c) of section 2009.054 of the Government Code states that “[i]nformation in the final written agreement is subject to required disclosure, is excepted from required disclosure, or is confidential in accordance with Chapter 552 and other law.” We therefore find that section 2009.054 of the Government Code does not make information in the settlement agreements confidential.

With respect to your argument under section 111.006 of the Tax Code, we find that some of the information contained in the settlement agreements is confidential under section 111.006. Section 111.006(a)(2) makes confidential “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.” We have marked the information which must be withheld from the submitted settlement agreements, including the submitted correspondence between the comptroller and taxpayers containing settlement terms, under section 111.006(a)(2) in conjunction with section 552.101 of the Government Code.

You also argue that the submitted Joint and Agreed Motions to Dismiss are excepted from disclosure under section 111.006(a)(2). 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. We do not, however, believe that either the submitted joint motions to dismiss or the accompanying attachments constitute a “ruling” or

²Chapter 151 of the Tax Code, which pertains to sales, excise, and use tax, also has a similar confidentiality provision. *See* Tax Code § 151.027(b). Thus, the information made confidential under section 151.027 is co-extensive with information deemed confidential under section 111.006.

“decision” of the comptroller that must be released with only the identity of the taxpayer redacted. Rather, because the joint motions were filed by both the taxpayer and the comptroller, the comptroller must not only redact the identity of the taxpayer but also withhold information contained in the joint motions that was “secured, derived, or obtained by the comptroller ... during the course of an examination of the taxpayer’s books, records, papers, officers, or employees.” Likewise, the comptroller must withhold from the attachments information “secured, derived, or obtained by the comptroller ... during the course of an examination of the taxpayer’s books, records, papers, officers, or employees.” The comptroller must also redact the identifying information of the taxpayer in the attachments because disclosure of this information would tend to identify the taxpayer in the accompanying decision. We have marked the information in the Joint and Agreed Motions to Dismiss, and attachments, that must be withheld under section 111.006(a)(2) in conjunction with section 552.101.

To summarize, the comptroller may not withhold submitted settlement information under section 2009.054 of the Government Code or under section 154.073 of the Civil Practice and Remedies Code. Portions of the submitted settlement information, as well as portions of the Joint and Agreed Motions to Dismiss and attachments, must be withheld under section 111.006(a)(2) of the Tax Code. We have marked the information to be withheld.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 148592

Enc: Submitted documents

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