



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2003

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

OR2003-7642

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# 189964.

The Comptroller of Public Accounts (the "comptroller") received a request for "the most recent financial report of the Dallas Police Association, Dallas Police Patrolmen's Union and the Texas Peace Officers Association." You state that you have released some of the requested information but claim that three documents that you have submitted to this office are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You contend that two sales tax returns are confidential under section 151.027 of the Tax Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Section 151.027 provides in pertinent part:

(a) Information in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection, except for information set forth in a lien filed under this title or a permit issued under this chapter to a seller and except as provided by Subsection (c) of this section.

....

(c) This section does not prohibit:

- (1) the examination of information, if authorized by the comptroller, by another state officer or law enforcement officer, by a tax official of another state, by a tax official of the United Mexican States, or by an official of the United States if a reciprocal agreement exists;
- (2) the delivery to a taxpayer, or a taxpayer's authorized representative, of a copy of a report or other paper filed by the taxpayer under this chapter;
- (3) the publication of statistics classified to prevent the identification of a particular report or items in a particular report;
- (4) the use of records, reports, or information secured, derived, or obtained by the attorney general or the comptroller in an action under this chapter against the same taxpayer who furnished the information;
- (5) the delivery to a successor, receiver, executor, administrator, assignee, or guarantor of a taxpayer of information about items included in the measure and amounts of any unpaid tax or amounts of tax, penalties, and interest required to be collected;
- (6) the delivery of information to an eligible municipality in accordance with Section 321.3022; or
- (7) the release of information in or derived from a record, report, or other instrument required to be furnished under this chapter by a governmental body, as that term is defined in Section 552.003, Government Code.

Tax Code § 151.027(a), (c). In this instance, you state that the submitted sales tax returns were "required to be furnished" by the taxpayer under Chapter 151 of the Tax Code." Having considered your representations and reviewed the information at issue, we agree that section 151.027(a) applies. You further state that none of the exceptions in section 151.027(c) "are applicable in this situation." We therefore conclude that the submitted sales tax returns are confidential under section 151.027 of the Tax Code and must be withheld pursuant to section 552.101 of the Government Code.

You also argue that the submitted franchise tax report is made confidential by the Tax Code. Section 552.101 also encompasses section 171.206 of the Tax Code, which provides in part:

Except as provided by Section 171.207 of this code, the following information is confidential and may not be made open to public inspection:

- (1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or

(2) information, including information about the business affairs, operations, profits, losses, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed by this chapter.

Tax Code § 171.206. You state that the submitted franchise tax report “was ‘required . . . to be filed’ by the taxpayer.” Having considered your representations and reviewed the information at issue, we agree that the franchise tax report is subject to section 171.206. You do not inform us, nor are we otherwise aware, that section 171.207 applies to this report.¹ We therefore conclude that the submitted franchise tax report is confidential under section 171.206 of the Tax Code and must therefore be withheld pursuant to section 552.101 of the Government Code.

You also request that this office issue a previous determination allowing the comptroller to withhold sales tax returns and franchise tax reports under section 552.101 as information made confidential by law. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that sales tax returns are confidential under section 151.027 of the Tax Code and must therefore be withheld pursuant to section 552.101 of the Government Code unless one of the release provisions in section 151.027(c) applies. *See* Gov’t Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). The comptroller may also rely on this ruling as a previous determination under section 552.301(a) that franchise tax reports are made confidential by section 171.206 of the Tax Code and must be withheld from disclosure under section 552.101 of the Government Code. *See* Gov’t Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). Therefore, so long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the comptroller need not ask for a decision from this office again with respect to sales tax returns or franchise tax reports requested of the comptroller under Chapter 552 of the Government Code. *See* Gov’t Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001).

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

¹Section 171.207 of the Tax Code provides:

The following information is not confidential and shall be made open to public inspection:

- (1) information contained in a document filed under this chapter with a county clerk as notice of a tax lien; and
- (2) information contained in a report required by Section 171.203 of this code.

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).

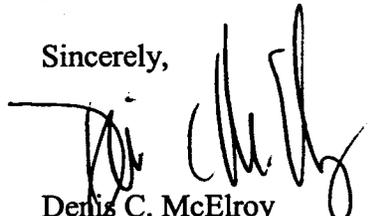
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 189964

Enc. Submitted documents

c: Mr. Harold B. Cornish
601 Nora Lane
DeSoto, Texas 75115
(w/o enclosures)