



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2004

Ms. Ruth H. Soucy  
Manager, Open Records Division  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2004-3431

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 200330.

The Comptroller of Public Accounts (the "comptroller") received a request for the results of a specified audit. 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.

Initially, we must address your obligations under section 552.301 of the Government Code. Under section 552.301(b), a governmental body that wishes to withhold information from public disclosure must request a ruling from this office not later than the tenth business day after the date of receiving the written request. Within fifteen days of receiving the request, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D).

You inform us that the comptroller received the request for information on September 25, 2003. You did not submit a request for a ruling until February 24, 2004 and

did not provide the documents required under section 552.301(e) until the same date. Thus, you failed to meet both deadlines prescribed by section 552.301.

Because you failed to comply with the procedural requirements of section 552.301, the requested information is presumed to be public information. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). As section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness, we will address your argument under that exception. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

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 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 the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2). You inform us that some of the submitted documents were obtained directly from the taxpayer. Those documents are confidential under section 111.006 of the Tax Code and must be withheld pursuant to section 552.101 of the Government Code.

We note that some of the submitted records consist of information that was generated by the comptroller and not by the taxpayer. You assert that these records contain information obtained from records filed with the comptroller or obtained during the course of an examination of the taxpayer's records, officers or employees for purposes of sections 111.006(a)(2). We find that those records are confidential under section 111.006 of the Tax Code and therefore must be withheld pursuant to section 552.101 of the Government Code. The comptroller must also withhold the information that identifies taxpayers under section 552.101 in conjunction with section 111.006. *See A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 680 (Tex. 1995); Attorney General Opinion H-223 (1974). We have marked this information accordingly.

However, the remaining submitted information was not "obtained from records filed with the comptroller or obtained during the course of an examination of the taxpayer's records, officers or employees." Thus, this information is not confidential under section 111.006, and therefore may not be withheld under section 552.101 of the Government Code.

In summary, we conclude that the comptroller must withhold information obtained directly from the taxpayer, information obtained from records filed with the comptroller or obtained

during the course of an examination of the taxpayer's records, officers or employees, and information that identifies taxpayers under section 552.101 of the Government Code in conjunction with section 111.006 of the Tax Code. The remaining submitted information must be released to the requestor.<sup>1</sup>

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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<sup>1</sup>Some of the documents marked for release contain or consist of confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the comptroller receives a future request for this information from an individual other than the requestor or his authorized representative, the comptroller should again seek our decision.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/lmt

Ref: ID# 200330

Enc. Submitted documents

c: Mr. Michael Bragg  
3341 Hidden Ridge  
Las Vegas, Nevada 89129  
(w/o enclosures)