ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2005

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

OR2005-04659

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# 225433.

The Comptroller of Public Accounts (the "comptroller") received a request for information relating to closed cases during a specified time interval that involved tax refunds or tax liability decisions concerning ten named entities. You inform us that the comptroller has released some of the requested information but seek to withhold the submitted information under section 552.101 of the Government Code. In addition, the comptroller states the submitted information implicates the proprietary interest of The Spectrum Organization, Inc. ("Spectrum"), but the comptroller takes no position as to whether the information is excepted under section 552.110 of the Government Code. Accordingly, you notified Spectrum of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting third party with proprietary interest to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have considered your arguments and have reviewed the information you submitted.

The comptroller states the requestor asked for an administrative hearing decision. You further explain that one document is an attachment incorporated by reference into the decision. The comptroller then states: "We defer to you as to whether the attachment is

responsive as well." However, the comptroller and her designated public information officer have the responsibility of responding to an open records request and determining which information is responsive to a request for information. *See* Gov't Code §§ 552.201-.205. Since the comptroller has submitted the document, we will address the comptroller's arguments as to this document.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Spectrum has not submitted to this office any reasons explaining why its information should not be released. We thus have no basis to conclude that the release of Spectrum's information will harm its proprietary interests. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Thus, the comptroller may not withhold the information under section 552.110.

The public availability of the administrative hearing decision is governed by section 552.025 of the Act, which provides as follows:

> (a) A governmental body with taxing authority that issues a written determination letter, technical advice memorandum, or ruling that concerns a tax matter shall index the letter, memorandum, or ruling by subject matter.
>
> (b) On request, the governmental body shall make the index prepared under Subsection (a) and the document itself available to the public, subject to the provisions of this chapter.
>
> (c) Subchapter C [of chapter 552 of the Government Code] does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority.

Gov't Code § 552.025. Thus, section 552.025 provides that a governmental body with taxing authority that issues rulings encompassed by section 552.025 shall make such rulings available to the public and that subchapter C of the Act, which contains all of the Act's exceptions to required public disclosure, does not authorize withholding such rulings from the public. *See id.* § 552.025(b)-(c). The comptroller is a governmental body with taxing authority. *See* Tax Code tit. 2.

In this instance, you contend that the administrative hearing decision and the attachment incorporated by the administrative hearing decision contain information that is excepted from

public disclosure under section 552.101 of the Act.[1] We note, however, that section 552.101 is one of the exceptions found in subchapter C of the Act. Under section 552.025(c), the exceptions to public disclosure found in subchapter C are not applicable to information encompassed by section 552.025(a) that must be made available to the public under section 552.025(b). As you appear to concede, the submitted administrative hearing decision is a written determination letter, technical advice memorandum, or ruling concerning a tax matter that was issued by a governmental body with taxing authority. Therefore, the comptroller may not withhold the administrative hearing decision and the attachment incorporated by the administrative hearing decision under section 552.101.

You also ask whether, under certain language found in section 552.025(b), the administrative hearing decision and its attachment would be subject to section 552.022 of the Act. Section 552.025(b) provides that "[o]n request, the governmental body shall make the index prepared under Subsection (a) and the document itself available to the public, *subject to the provisions of this chapter*." Gov't Code § 552.025(b) (emphasis added). You point out that "the provisions of [chapter 552 of the Government Code]" include section 552.022. You note that under this section, "final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases" are made expressly public unless they are expressly confidential under other law. Gov't Code § 552.022(a)(12).

You contend that if the submitted administrative hearing decision and its attachment are subject to section 552.022(a)(12), then the comptroller may withhold information contained in the decision that is expressly confidential under other law. Even assuming, however, that section 552.022(a)(12) is applicable to the submitted information, we believe that the public availability of this particular information is governed by section 552.025. *See Holmes v. Morales*, 924 S.W.2d 920, 923 (1996) (when two sections of act apply, specific section controls over general provision); *Wallace v. Tex. Dep't of Crim. Justice*, 36 S.W.3d 607, 611 (Tex. App.—Houston [1st Dist.] 2000, review denied) (assuming that specific deadline for filing grievance claim conflicted with general two-year limitation period for tort claims, specific provision controlled).

In summary, the administrative hearing decision and its attachment must be released under section 552.025.

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

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[1]Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

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).

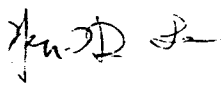
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 225443

Enc: Submitted documents

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