



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2005

Mr. James G. Nolan
Open Records Attorney
Texas Comptroller of Public Accounts
P. O. Box 13528
Austin, Texas 78711-3528

OR2005-10032

Dear Mr. Nolan:

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# 235782.

The Texas Comptroller of Public Accounts (the "comptroller") received a request from the Fort Bend County Tax Office for "the number, location and owners['] names and addresses of Coin-Operated Amusement Machine[s] within Fort Bend County[.]" You state that the comptroller has provided some requested information to the requestor but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.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. This exception encompasses information that other statutes make confidential. You inform us that the information at issue pertains to coin-operated machines regulated by the comptroller under chapter 2153 of the Occupations Code. *See* Occ. Code § 2153.051 (duties of comptroller in administering chapter 2153, regulating coin-operating machines). Section 2153.101 of the Occupations Code provides as follows:

¹We 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.

(a) Except as provided by Subsection (b), information contained in a license application is confidential.

(b) After a license is issued under this chapter, the ownership statement contained in the license application is a public record.

Occ. Code § 2153.101. Section 2153.102 of the Occupations Code provides as follows:

Except for information specifically designated as a public record, information derived from a book, record, report, or application required to be made available under this chapter to the comptroller or attorney general:

(1) is confidential; and

(2) may only be used to enforce this chapter.

Id. § 2153.102. The submitted information consists of permit application documents.² Upon review, we agree that the information contained in these application materials is confidential under sections 2153.101 and 2153.102 of the Occupations Code. Accordingly, we determine the comptroller must generally withhold the information in the license and tax permit applications pursuant to section 552.101 of the Government Code as information made confidential by law.

However, you ask whether the interagency transfer doctrine permits disclosure of this information to the requestor in this instance. The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion. Nos. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). We note that section 2153.102 of the Occupations Code specifically provides that the information at issue “is confidential” and “may only be used to enforce [chapter 2153 of the Occupations Code].” Occ. Code § 2153.102. We further note that section 2153.051 of the Occupations Code provides that the comptroller may disclose confidential information to an “appropriate official” for the purpose of administering chapter 2153. *See id.* § 2153.051(b)(5); *see also id.* § 2153.057(a) (comptroller shall use all agencies available to enforce chapter 2153).

Because the legislature has determined that this information is confidential and may only be released for a specified purpose, an interagency transfer of this information is prohibited unless it is consistent with that specified purpose. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where

²You inform us that the comptroller has already provided the requestor with the information from the ownership statements.

potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). As such, if the comptroller determines that release of this information would constitute use of the information for purposes of enforcing chapter 2153 of the Occupations Code, then the comptroller may release the information in this instance pursuant to section 2153.102(2). Otherwise, the comptroller must withhold the information under section 552.101 of the Government Code in conjunction with sections 2153.101 and 2153.102 of the Occupations Code.

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 ten 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); *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 Office of the Attorney General 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 235782

Enc. Submitted documents

c: Ms. Patsy Schultz
Fort Bend County Tax Office
P. O. Box 399
Richmond, Texas 77469-0399
(w/o enclosures)