



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2006

Ms. Patricia E. Carls
Brown & Carls, L.L.P.
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2006-00848

Dear Ms. Carls:

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# 240815.

The City of Georgetown (the "city"), which you represent, received a request for the "aggregate sales tax collected by businesses in" a specified shopping center. 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.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 section encompasses information protected by other statutes. Section 321.3022 of the Tax Code provides in part:

- (b) The comptroller on request shall provide to a municipality that has adopted a tax under this chapter information relating to the amount of tax paid to the municipality under this chapter during the preceding or current

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.

calendar year by each person doing business in an area, as defined by the municipality, that is part of:

- (1) an interlocal agreement;
- (2) a tax abatement agreement;
- (3) a reinvestment zone;
- (4) a tax increment financing district;
- (5) a revenue sharing agreement;
- (6) an enterprise zone;
- (7) a neighborhood empowerment zone;
- (8) any other agreement, zone, or district similar to those listed in Subdivisions (1)-(7); or
- (9) any area defined by the municipality for the purpose of economic forecasting.

....

(f) Information received by a municipality under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the municipality under this chapter, or for the purpose described in Subsection (g).

(g) Information received by a municipality under Subsection (b) may be used by the municipality to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

Tax Code § 321.3022(b), (f)-(g). You state and provide documentation demonstrating that the city entered into a development agreement (the “agreement”) with the owner of the specified shopping center. We note that the agreement provides for the payment of performance-based economic incentives based on sales tax generated by and received from businesses in the shopping center. You indicate that the submitted information was provided to the city by the comptroller for the purpose of assisting in determining revenue sharing under the agreement. We therefore conclude that the submitted information is confidential under section 321.3022(f) and must be withheld under section 552.101. As our ruling on this issue is dispositive, we need not address your remaining arguments.

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, 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 10 calendar days of the date of this ruling.

Sincerely,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/segh

Ref: ID# 240815

Enc. Submitted documents

c: Mr. Trey McLendon
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(w/o enclosures)