



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2007

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

OR2007-12146

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# 289367.

The Comptroller of Public Accounts (the "comptroller") received a request for the name of the taxpayer who "incorrectly collected and reported [the] local tax" that resulted in a local sales tax amount paid in error to the requestor. You 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 information.

Section 552.101 of the Government Code 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 made confidential by other statutes, including section 151.027 of the Tax Code, which provides in 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). Having considered your representations and reviewed the information at issue, we find that the requested information is information obtained during the course of an examination of the taxpayer's records for purposes of section 151.027 of the Tax Code. We further find that release of the information in this instance is not authorized by section 151.027(c). *Cf.* Tax Code § 321.3022(d) (providing that comptroller may not provide municipality with otherwise releaseable information relating to amount of tax paid to municipality under chapter 321 if information involves "not more than three persons doing business in the defined area who remit taxes . . . unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the municipality"). Therefore, the comptroller must withhold the requested information pursuant to section 552.101 of the Government Code in conjunction with section 151.027 of the Tax Code. *See* Attorney General Opinion H-223 (1974).

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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/jb

Ref: ID# 289367

Enc. Submitted documents

c: Mr. Cary L. Bovey
Bovey & Bojorquez, L.L.P.
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750
(w/o enclosures)