



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 24, 2008

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

OR2008-03798

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# 305196.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for three categories of information: 1) all information available for a specified category of full service restaurants with five or more locations and headquarters in Texas; 2) all information available for privately owned businesses with annual revenue between \$5,000,000 and \$25,000,000; and 3) all information available for companies headquartered in Texas with annual revenue greater than \$500,000,000. You state that you have released the information responsive to the first category of requested information and some statistical information. However, you claim that the remaining 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.<sup>1</sup>

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<sup>1</sup>We 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.

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.

(b) Information secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees, including the business affairs, operations, profits, losses, and expenditures of the taxpayer, is confidential and not open to public inspection 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), (b), (c). This provision excepts from public disclosure information and data obtained or "derived" from a taxpayer's records. The responsive information consists of a list containing the name, address, city, zip code, tax number, and North American Industry Classification System Code of businesses falling within the requested criteria. You indicate that the submitted list consists of information in or derived from a report or other instrument required to be submitted by the taxpayers pursuant to chapter 151 of the Tax Code. Upon review, however, we find that because the list encompasses a large range of annual revenues, the responsive information does not reveal the actual revenue amounts derived from any individual taxpayer's records. As such, we determine that the requested information is not made confidential by section 151.027(a) of the Tax Code, and it may not be withheld under section 552.101 on that basis. As you raise no other exceptions to disclosure, we conclude that the requested information must be released to the requestor. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in black ink, appearing to read 'Jessica J. Maloney', with a long, sweeping horizontal line extending to the right.

Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 305196

Enc. Submitted documents

c: Mr. Rodney Macon  
8701 Bluffstone Cove, Apt. 2287  
Austin, Texas 78759  
(w/o enclosures)