



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2009-00219

Dear Ms. Rangel:

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# 331604.

The Fort Bend County Auditor, Treasurer, and Clerk's Office (collectively the "county") received a request for a list of all details regarding outstanding monies, unclaimed funds, uncashed checks, and surpluses and overages from Sheriff Sales and County Tax Sales, which are worth over a specified value and which originated during a specified time period.¹ You state that you have provided the requestor with some of the requested information. 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" and encompasses information made confidential by statute. Gov't Code § 552.101. Section 552.101 encompasses section 74.104 of the Property Code. Title 6 of the Property Code pertains to unclaimed property. Several provisions of Title 6 govern the conditions under which different types of property are presumed to be abandoned by the owner of the property. *See, e.g.*, Prop. Code §§ 72.101 (personal property), 73.101 (property held by financial institution), 75.101 (mineral proceeds, and owner's underlying right to receive mineral proceeds). Under chapter 74 of the Property Code, a holder of property presumed abandoned under chapter 72, 73, or 75 of the Property Code, or under chapter 154 of the Finance Code, must file a report of the property with the Comptroller of Public Accounts (the

¹We understand that the county received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

“comptroller”).² *See* Prop. Code § 74.101. Under section 76.101 of the Property Code, a municipality holding property that is presumed abandoned and is subject to chapter 76 must file a report of the property with the treasurer of the municipality.³ *See* Prop Code § 76.101.

The public availability of the property reports required under section 74.101 is governed by sections 74.104 and 76.104 of the Property Code.⁴ Section 74.104 provides:

(a) Except as provided by Section 74.201, 74.203, or 74.307, a property report filed with the comptroller under Section 74.101 is confidential until the second anniversary of the date the report is filed.

(b) The social security number of an owner that is provided to the comptroller is confidential.

Prop. Code § 74.104(a), (b). You argue that the submitted information consists of property reports that are confidential pursuant to section 74.104. However, you state that “[a]ccording to the Fort Bend County Clerk, the records in Exhibit C will be mailed to the comptroller for filing on October 31, 2008.” The request for information was received by the county on October 7, 2008. Accordingly, as of the date the request for information was received, the property reports had not been filed with the comptroller. Therefore, we conclude that section 74.104 does not apply to the submitted information and no portion of the information may be withheld under section 552.101 of the Government Code in conjunction with section 74.104 of the Property Code. As you raise no other exception to disclosure, we conclude that the county must release the submitted information to the requestor.⁵

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

²Chapter 154 of the Finance Code governs contracts for prepaid funeral services. *See* Fin. Code § 154.301 (presumption of abandonment for money paid by purchaser of prepaid funeral benefits contract).

³Chapter 76 of the Property Code applies to property held by a school district, municipality, or county that is presumed abandoned under chapter 72 or chapter 75 and is valued at \$100 or less. *See* Prop. Code § 76.001. Chapter 74 of the Property Code does not apply to property that is subject to chapter 76 of the Property Code. *See* Prop. Code § 74.001.

⁴We note that section 76.104, which applies to property valued at \$100 or less and held by a school district, municipality, or county, is inapplicable here.

⁵We note that the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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). If the governmental body does not file suit over 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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 331604

Enc. Submitted documents

c: Requestor
(w/o enclosures)