



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

Mr. Paul F. Wieneskie
Attorney for the City of Euless
204 South Mesquite
Arlington, Texas 76010

OR2010-05202

Dear Mr. Wieneskie:

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# 377302.

The City of Euless (the "city"), which you represent, received a request for information pertaining to the amount of sales tax revenue received by the city from Redi-Mix Concrete ("Redi-Mix") for the months of October, November, and December for the years 2007, 2008, and 2009. You claim 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. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor seeks only information for the months of October, November, and December for the years 2007, 2008, and 2009. Accordingly, we conclude only the information pertaining to the specified months and years, and none of the remaining information you have submitted, is responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

Next, the requestor argues the city has no authority to provide economic incentives to Redi-Mix based on sales tax payments received from Redi-Mix because the city's authority to provide economic incentives to Redi-Mix under chapter 380 of the Local Government Code is preempted by Article III, sections 51 and 52 of the Texas Constitution. We do not address this argument because making such a determination is beyond the scope of this office's authority in issuing open records rulings. See *id.* § 552.301(a) (open records division's authority is limited to determining, upon a governmental body's request, whether

requested information falls within an exception to disclosure). Thus, this ruling does not address the issues raised by the requestor that are beyond the scope of our authority.

Next, the requestor contends the city did not comply with the procedural requirements of the Act in requesting our decision. The requestor asserts the city failed to comply with section 552.301(e)(1)(D), which states a governmental body must submit "a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]" *Id.* § 552.301(e)(1)(D). The city states it has provided a representative sample of the requested information as the responsive "records are voluminous and in identical format from year to year[.]" Thus, contrary to the requestor's assertion, we find the city complied with section 552.301(e)(1)(D). We assume, however, 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.

We also understand the requestor to argue the city failed to comply with section 552.301(a) in requesting a decision from this office. Section 552.301(a) of the Government Code provides "[a] governmental body that receives a written request for information that it wishes to withhold from public disclosure . . . must ask for a decision from the attorney general[.]" Gov't Code § 552.301(a). The requestor asserts you have no legal standing to seek our decision in regards to his request because, in accordance with the city's charter, the city attorney shall represent the city in all litigation and legal proceedings. We note section 552.301(a) requires a governmental body to request an attorney general decision for information it seeks to withhold. There is no requirement that a decision must be sought by a particular representative of a governmental body. In this instance, you, as a representative of the city, requested our decision on behalf of the city. Accordingly, we find the city complied with the requirements of section 552.301(a) in requesting a decision from our office.

Next, the requestor argues the requested information is subject to sections 552.022 and 552.025 of the Government Code. Section 552.022 provides eighteen categories of information are not excepted from required disclosure under the Act, unless the information encompassed by the specified categories is expressly confidential under other law. Section 552.101 of the Government Code is a mandatory exception, and thus it constitutes "other law" for purposes of section 552.022. *Id.* § 552.022. Because the city raises only section 552.101, we need not address the requestor's contention the responsive information is subject to section 552.022.

Section 552.025 of the Government Code provides the exceptions under the Act do not apply to a written determination letter, technical advice memorandum, or ruling that concerns a tax matter issued by a governmental body with taxing authority. *Id.* § 552.025. However, upon

review, we find no portion of the responsive information constitutes a written determination letter, technical advice memorandum, or ruling that concerns a tax matter issued by a governmental body with taxing authority. Accordingly, section 552.025 does not apply to any portion of the responsive information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes. You contend the responsive information is confidential under section 552.101 in conjunction with section 151.027 of the Tax Code. Section 151.027(b) provides for the confidentiality of information obtained during the course of an examination of a taxpayer's books. Section 151.027 only applies to information furnished to and reviewed by the Texas Comptroller of Public Accounts ("the comptroller") during its investigation of a taxpayer. Tax Code § 151.027; *see* Open Records Decision No. 520 (1989) (section 151.027 of the Tax Code applies only to records and information in the comptroller's custody and not to information in another governmental body's possession). Therefore, section 151.027 applies only to the comptroller, not the city. *See* Tax Code § 151.027; ORD 520. Thus, we find you have failed to demonstrate the responsive information is subject to section 151.027. Consequently, the city may not withhold the responsive information under section 552.101 on such basis.

You assert Exhibit B-2 is excepted from public disclosure pursuant to section 321.3022 of the Tax Code. Section 552.101 of the Government Code also encompasses section 321.3022, which provides in part:

(a-1) Except as otherwise provided by this section, the comptroller on request shall provide to a municipality or other local governmental entity that has adopted a tax under [chapter 321 of the Tax Code]:

(1) information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$25,000; and

(2) any other information as provided by this section.

...

(f) Information received by a municipality or other local governmental entity 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 or other local governmental entity under this chapter, or for the purpose described in Subsection (g).

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

Tax Code § 321.3022(a-1), (f)-(g). You state the first two pages of Exhibit B-2 constitute the "Confidential Sales Tax Report" the city received from the comptroller pursuant to section 321.3022(a-1). You also seek to withhold the city's internal confidential report which you state is derived from the information received from the comptroller. The responsive information reflects the information we have marked in the city's internal confidential report was received from the comptroller. Based on your representations and our review, we agree the responsive information we have marked in Exhibit B-2 must be withheld under section 552.101 in conjunction with section 321.3022(f). However, you have failed to demonstrate the city received the remaining responsive information in Exhibit B-2 from the comptroller pursuant to section 321.3022(a-1). Consequently, the remaining responsive information in Exhibit B-2 may not be withheld under section 552.101 in conjunction with section 321.3022(f). Thus, the city must release the remaining information to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 377302

Enc. Submitted documents

c: Requestor
(w/o enclosures)