



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2012

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

OR2012-10908

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# 459091 (Comptroller ID Nos. 8224675300, 8233570264, 8228387425, 8240381699, 8270800618, 8369626122).

The Texas Comptroller of Public Accounts (the "comptroller's office") received six requests for a specified agreement with Amazon.com, Inc. and its affiliated entities ("Amazon"). You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state the submitted information may contain proprietary information of a third party subject to exception under the Act. Accordingly, the comptroller's office notified Amazon of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). 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 protected by other statutes, including sections 111.006 and 171.206 of the Tax Code. Section 111.006 of the Tax Code protects

from disclosure the following types of taxpayer information obtained from an audit of a taxpayer:

all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's book, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

Tax Code § 111.006(a)(2). Section 171.206 of the Tax Code provides that the following information is generally excepted from disclosure:

(1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or

(2) information, including information about the business affairs, operations, profits, losses, cost of goods sold, compensation, or expenditures of a taxable entity, obtained by an examination of the books and records, officers, partners, trustees, agents, or employees of a taxable entity on which a tax is imposed by this chapter.

*Id.* § 171.206. The question of whether franchise tax refund amounts are excepted from public disclosure under the Act was addressed by the Texas Supreme Court in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-679 (Tex. 1995). The Supreme Court addressed the applicability of sections 111.006 and 171.206 of the Tax Code to the Act:

The Tax Code prevents the disclosure of data "obtained" or "derived" from a taxpayer . . . Confidentiality under the Tax Code thus turns on the identity of the *source* of the information. It makes confidential the information obtained or derived from *taxpayers*.

*Id.* at 676 (citations omitted) (emphasis in original). The court concluded that:

[T]he amounts of assessed deficiencies, refunds, or credits are derived from taxpayer-furnished information, and are thus confidential . . . [and] it strikes the proper balance between the Tax Code and [the Act] for the comptroller to disclose that audits resulted in a deficiency assessment or refund warrant, but not to disclose the amounts of an assessment or refund.

*Id.* at 680 (citations omitted). You argue the submitted information is confidential under sections 111.006(a)(2) and 171.206 of the Tax Code. Upon review, we find portions of the submitted information, which we have marked, reveal the business affairs, operations, source of income, profits, losses, or expenditures of a taxpayer and are confidential under sections 111.006(a)(2) and 171.206 of the Tax Code. Accordingly, the information we have

marked must be withheld under section 552.101 of the Government Code. However, you have failed to demonstrate how the remaining information at issue constitutes information obtained from taxpayers or was derived from taxpayer records. Accordingly, none of the remaining information at issue may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 151.027 of the Tax Code. Section 151.027 of the Tax Code provides in relevant 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.

Tax Code § 151.027(a)-(b). Upon review, you have provided no arguments explaining how the remaining information at issue is information in or derived from a record, report, or other instrument required to be furnished under chapter 151 for purposes of section 151.027(a). Further, information made confidential under section 151.027(b) is co-extensive with information deemed confidential under section 111.006(a)(2). Because we have already disposed of your claims under section 111.006, none of the remaining information at issue may be withheld under section 151.027(b). Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on this basis.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Amazon explaining why its information should not be released to the requestor. Therefore, because Amazon has not demonstrated any of the information relating to it is proprietary for purposes of the Act, the comptroller's office may not withhold any of the information on the basis of any interest Amazon may have in the information. *See id.* § 552.110(a)-(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would result from disclosure); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that

party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

In summary, the comptroller's office must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with sections 111.006 and 171.206 of the Tax Code. The remaining information must be released.

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](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,



Charles Galindo Jr.  
Assistant Attorney General  
Open Records Division

CG/sdk

Ref: ID# 459091

Enc. Submitted documents

c: 6 Requestors  
(w/o enclosures)

Mr. Rich Prem  
Vice President, Indirect Texas  
Amazon.com  
440 Terry Avenue, North  
Seattle, Washington 98109  
(w/o enclosures)