



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2012

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

OR2012-16843

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# 468728 (Comptroller ID No. 8495086638).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for a list of certain information concerning all taxpayers that reported the 1% tax rate for franchise tax returns for report years 2009 through 2012, sorted by dollar amount and with all zero paid returns deleted.¹ You claim that the 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 representative sample of information.²

Initially, we note the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information.

¹You inform us, and provide documentation showing, the requestor modified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Further, the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266; ORD 452 at 3. Likewise, a governmental body is not required to produce the responsive information in the format requested or create new information to respond to the request for information. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex.App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. See Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, you have submitted information for our review. Thus, we find the comptroller has made a good faith effort to locate information responsive to this request. Accordingly, we will address your claimed exception for the submitted information.

Next, we note portions of the submitted information, which we have marked, are not responsive to the instant request for information because they do not pertain to the requested information. This ruling does not address the public availability of the non-responsive information, and the comptroller need not release non-responsive information to the requestor.

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 section 171.206 of the Tax Code. Section 171.206 of the Tax Code provides the following information collected under the Franchise Tax Act 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.

Tax Code § 171.206. The Supreme Court of Texas addressed the applicability of section 171.206 of the Tax Code to the Act in *A&T Consultants*, stating:

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:

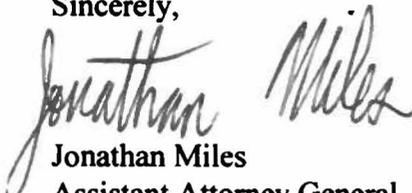
[T]he amounts of assessed deficiencies, refunds, or credits are derived from taxpayer-furnished information, and are thus confidential . . . [and] it strikes the proper balance between the Tax Code and [the Act] for the comptroller to disclose that audits resulted in a deficiency assessment or refund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

Id. at 680 (citations omitted). Accordingly, section 171.206 exempts from public disclosure information and data obtained or “derived” from a taxpayer’s records. You argue the submitted list is confidential under section 171.206 because it consists of information compiled from amounts of tax due that were required to be reported by franchise taxpayers pursuant to chapter 171 of the Tax Code. You inform us that the submitted list, by ranking the franchise taxpayers, even though it does not state the specific amount of franchise tax paid, reveals information regarding the business affairs and financial condition of the franchise taxpayer as compared to the other franchise taxpayers. Based on our review of the information at issue and *A&T Consultants*, we conclude the responsive information is confidential under section 171.206 of the Tax Code as information obtained from a record required to be filed with the comptroller that reveals the taxpayer’s business affairs. Accordingly, the comptroller must withhold the responsive information pursuant to section 552.101 of the Government Code in conjunction with section 171.206 of the Tax Code.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 468728

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**