



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1994

Honorable John Sharp
Comptroller of Public Accounts
Capitol Station
Austin, Texas 78774

Open Records Decision No. 624

Re: Whether all identifying information about persons liable for state sales tax or franchise tax and their business operations is confidential under sections 111.006, 151.027, and 171.206 of the Tax Code; clarification of Attorney General Opinion H-223 (1974) (RQ-561)

Dear Mr. Sharp:

Your office has received a number of applications under the Open Records Act, Government Code chapter 552,¹ for information about taxpayers subject to the sales and use tax or the franchise tax. You claim that various items of information are excepted from disclosure by sections 111.006, 151.027, and 171.206 of the Tax Code, as construed by Attorney General Opinion H-223 (1974), and by certain exceptions to the Open Records Act. Chapter 552 of the Government Code provides that information held by governmental bodies is available to the public, subject to exceptions. Information made confidential by statute, such as the Tax Code confidentiality provisions you cite, is excepted from disclosure under the Open Records Act. See Gov't Code § 552.101; Open Records Decision No. 478 (1987).

The comptroller's office receives financial information about taxpayers in the reports they must file, see Tax Code ch. 151 (Limited Sales, Excise, and Use Tax); ch. 171 (franchise tax), and through auditing the books and examining the officers and employees of business entities permitted to do business in Texas. Tax Code § 111.004. This information is confidential under sections 111.006, 151.027, and 171.206 of the Tax Code. Chapter 111 of the Tax Code, which establishes general procedures for the collection of state taxes, provides as follows:

(a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b) of this section:

(1) [federal tax return information];

¹The Open Records Act, formerly codified as V.T.C.S. article 6252-17a (1925), has been recodified as chapter 552 of the Government Code, in nonsubstantive recodification. See Acts 1993, 73d Leg., ch. 268, at 587 (title); Gov't Code § 552.221 (formerly section 4 of article 6252-17a, V.T.C.S.) (application for public information).

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

(b) [when confidential information is subject to subpoena].

(c) [use of confidential information to enforce state tax laws and in judicial or administrative proceeding].

Id. § 111.006.

Section 151.027 of the Tax Code provides confidentiality for the following information collected under the Limited Sales, Excise, and Use Tax Act:

(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's, is confidential and not open to public inspection except as provided by Subsection (c) of this section.

Subsection (c) permits "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." *Id.* § 151.027.

Chapter 171, which governs the franchise tax imposed on corporations, *id.* § 171.001, includes a confidentiality provision that parallels section 151.027 of the Tax Code:

[T]he following information is confidential and may not be made open to public inspection:

(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, or expenditures of a corporation, obtained by an examination of the books and records,

officers, or employees of a corporation on which a tax is imposed by this chapter.

Id. § 171.206.

Attorney General Opinion H-223 (1974) construed articles 1.031² and 20.11(G),³ Title 122A, Taxation-General, V.T.C.S. (1969), the predecessors of sections 111.006 and 151.027 of the Tax Code. Attorney General Opinion H-223 concluded that these provisions did not require the comptroller to withhold the fact that a taxpayer has requested a redetermination or a "claim for refund" hearing, stating that revelation of this fact "is hardly comparable to revealing the actual details of his business affairs." See Open Records Decision Nos. 614 (1993); 212 (1978); 88 (1975) (although content of a communication may be confidential, fact that communication has been made is not). Since the comptroller was prohibited from disclosing "information about a taxpayer's affairs which has been obtained while examining his books, records, [and] returns," he could disclose administrative decisions of a taxpayer's claim for refund or request for a redetermination only by deleting information that would identify the taxpayer.

We believe that Attorney General Opinion H-223 correctly decided that the taxpayer's name and other identifying information should be deleted from the comptroller's administrative decisions resolving sales and use tax and franchise tax disputes before releasing the decisions to the public. We are informed that the comptroller ordinarily introduces the audit report into evidence and may also introduce the tax returns into evidence. In the vast majority of cases, the financial information about the taxpayer found in the final order is drawn from these two confidential documents. We conclude that your office should continue to delete information identifying the taxpayer from administrative decisions on sales and use tax and franchise tax matters. In this way, the comptroller's conclusions on legal issues and the related fact findings will be available to the public, while the confidentiality of information within sections 111.006, 151.027, and 171.206 will be protected.

We caution, however, that the language of Attorney General Opinion H-223 should not be taken out of context and applied too broadly. Attorney General Opinion JM-590 stated that while the comptroller could disclose the fact that an individual has requested a hearing, "he is prohibited from disclosing facts about that taxpayer's business affairs." Attorney General Opinion JM-590 (1986) at 3. The confidentiality provisions do not prohibit the comptroller from revealing information about the taxpayer's business

²Acts 1969, 61st Leg., 2d C.S., ch. 1, art. 4, § 5, at 61.

³Acts 1961, 57th Leg., 1st C.S., ch. 24, art. I, § 1, at 71.

operations found in documents not subject to those provisions.⁴ We modify language in Attorney General Opinion H-223⁵ and Attorney General Opinion JM-590 suggesting that sections 111.006, 151.027, and 171.206 of the Tax Code prohibit the comptroller from disclosing any and all information about the taxpayer's business affairs despite its lack of connection with the subject matter of those provisions.

We turn to the first request that you have submitted, ID# 20864. The requestor asked for the following information⁶ concerning taxpayers audited for sales tax or franchise tax in the last four years: taxpayer's names and identification number, mailing address, tax type, period of time covered by the audit, name of auditor and audit office, and audit deficiency amount. The same information, except for audit deficiency amounts, was requested for taxpayers under audit or for whom an audit has been generated. The requestor also asked for sign-out logs for auditors in the comptroller's Houston office for September 1, 1989, through May 31, 1990, and for future sign-out logs to be made available on a monthly basis. The auditor sign-out logs show the day-by-day comings and goings and field assignments of each auditor.

You state that most of the requested information is available to the requestor, but you refuse to release an audit deficiency amount in the sales tax or franchise tax audit; a list of taxpayers for whom an audit has been generated, but who are not yet under audit; and auditor sign-out logs that might be generated in the future. You raise sections 111.006, 151.027, and 171.206 of the Tax Code and sections 552.108 and 552.111 of the Government Code with respect to these items of information.

An "audit deficiency amount" is "information secured, derived, or obtained by the comptroller . . . during the course of an examination of the taxpayer's books" made confidential by section 111.006(a) of the Tax Code. *See also* Tax Code §§ 151.027, 171.206. Accordingly, an audit deficiency amount in the sales tax or franchise tax audit of a particular taxpayer is excepted from disclosure under the Open Records Act by section 111.006(a) of the Tax Code.

You also wish to withhold the list of taxpayers for whom an audit has been generated but who are not yet under audit. When "an audit has been generated" for a taxpayer, the taxpayer has been selected for audit, and the audit division of the

⁴If pleadings and other documents submitted by a taxpayer in connection with an administrative hearing permit identification of the taxpayer in the final administrative decision, identifying information must be deleted from the pleadings prior to disclosing them to the public.

⁵Attorney General Opinion MW-548 (1982) has already rejected the suggestion in Attorney General Opinion H-223 (1974) that a confidentiality provision will authorize a governmental body subject to the Open Meetings Act, Gov't Code ch. 551, to meet in executive session to discuss the records.

⁶The requestor has asked for magnetic tapes containing this information. You raise no issue as to the form in which the information will be provided.

comptroller's office has set up the audit in its computer. The next step of the audit division is to notify the taxpayer that it will be subject to a routine audit and ask it to fill out a questionnaire. An audit may be cancelled if it turns out to be unfeasible, but ordinarily 90% of the taxpayers on the list will be audited. The list of taxpayers includes taxpayers whose names were randomly chosen and "recommended for audit" by a computer random selection program and taxpayers whose names were secured as "audit leads" through other sources, such as audits of other taxpayers, personal observations of comptroller staff, and information reported by business competitors, current or former employees, and others. You state that Texas tax collections would suffer from advance disclosure of information as to which taxpayers are likely to be audited and when the audit is likely to occur, and you argue that the list is exempt from mandatory disclosure under the Open Records Act by section 552.111 of the Government Code, or in the alternative, by section 552.108 of the Government Code.

Section 552.111 of the Government Code, formerly section 3(a)(11) of the Open Records Act, permits a governmental body to withhold an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies only to "those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993); *see also Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). Its purpose is to permit "free discussion among agency personnel as to policy issues"; it "does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda." Open Records Decision No. 615.

The list of taxpayers for whom an audit has been generated reflects a decision by the comptroller's office to audit those taxpayers, not the process of making a decision. It is not protected by section 552.111. *See* Open Records Decision No. 137 (1976) (discussing pre-decisional and post-decisional documents). We acknowledge the comptroller's interest in preventing the taxpayer from knowing in advance that he might be audited, but we are compelled to find that section 552.111 does not except this information from disclosure.

You also claim section 552.108 of the Government Code, formerly section 3(a)(8) of article 6252-17a, V.T.C.S., which excepts "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" from required public disclosure. This office has held that an agency "whose function is essentially regulatory in nature" is not a "law enforcement agency" even though it is charged with the duty of enforcing its own statute. Open Records Decision No. 199 (1978) (investigative report of Texas Board of Private Investigators and Private Security Agencies not excepted by section 3(a)(8) of the Open Records Act). "The term 'prosecution' in section 3(a)(8) applies to criminal prosecution, not to the [state agency]

board's administrative enforcement of the licensing laws." Open Records Decision No. 493 (1988) at 2 (emphasis in original). However, under some circumstances, "even a non-law enforcement agency may be able to claim the section 3(a)(8) exception" as to an investigative file. Attorney General Opinion MW-575 (1982) (section 3(a)(8) may apply to certain pesticide complaint investigation files of the Department of Agriculture); Open Records Decision No. 372 (1983) (if incident involving allegedly criminal conduct is under active investigation or prosecution, any proper custodian may invoke section 3(a)(8)). If a state agency board's investigation "reveals criminal conduct that the board intends to report to appropriate law enforcement officials, section 3(a)(8) would apply to that information, if its release would unduly interfere with law enforcement efforts." Open Records Decision No. 493 (dicta); *see also* Open Records Decision No. 297 (1981) (report of police investigation of dismissed traffic tickets in city auditor's possession).

A letter⁷ from your office states that the comptroller is the primary official responsible for investigating and reporting to the appropriate prosecuting authorities violations of the criminal provisions of the Texas Tax Code. It also states that the agency operates a Fraud Audit unit that investigates tax-related crimes and assists local prosecutors in prosecuting tax cases. The comptroller administers a number of statutes providing for civil enforcement of tax laws,⁸ but only criminal provisions applicable to violations of the sales and franchise tax laws are relevant to your claim that section 552.108 applies to the taxpayer information under consideration. *See* Tax Code §§ 151.705 (criminal penalty for retailer who fails to collect use tax), 171.363 (criminal penalty for corporation that willfully fails to file franchise tax report or files a fraudulent report); *see also id.* § 151.710 (misdemeanor penalty for violation of sales tax law, except as otherwise provided).

Section 552.108 of the Government Code might apply to the names of any taxpayers on the list who you intend to report to appropriate law enforcement officials for an alleged violation of a criminal law. However, you have not explained how release of the list, or of particular names on the list, will unduly interfere with law enforcement. *See* Open Records Decision No. 531 (1989). Nor have you indicated that you will be able to determine prior to the audit that any taxpayers will be referred to criminal law enforcement authorities. *See* Open Records Decision No. 582 (1990) (prospects for criminal prosecution are too speculative to withhold information based on section 3(a)(8)).

⁷Letter from Charles C. Johnstone, Executive Assistant, State of Texas, Comptroller of Public Accounts, to Faith S. Steinberg, Office of Texas Attorney General (March 7, 1991).

⁸*See, e.g.,* Tax Code §§ 111.017 (seizure and sale of delinquent taxpayer's property), 111.0046 (comptroller shall refuse to issue or renew any permit or license to person delinquent in tax collected by comptroller), 151.601 (suit to collect unpaid sales tax, penalties, and interest), 151.703 (penalty for failure to file sales tax report or to pay tax when due), 171.362 (penalty for failure to file franchise tax report or pay tax).

Accordingly, we conclude that the list of taxpayers who will be audited is not in any part excepted from public disclosure by section 552.108 of the Government Code.⁹

You also state that you and your staff do not usually determine who will do an audit or the period it will cover until very shortly before it begins. The completion date cannot be known in advance. Thus, you may not be able to provide the name of the auditor or the period covered by the audit for audits that have not yet begun. The Open Records Act applies only to information already in existence and does not require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed w.o.j.); Attorney General Opinion H-90 (1973); Open Records Decision No. 452 (1986).

You finally state that you need not provide auditor sign-out logs that might be generated in the future, but which do not presently exist. As we have already stated, the Open Records Act does not require you to prepare new information. A request for information that may be prepared in the future is not a proper request, and you need not treat it as a continuing request. Attorney General Opinion JM-48 (1983); Open Records Decision Nos. 476, 465 (1987).

The next request, designated ID# 20880, seeks all interoffice memos to your field offices for the past three years. You state that you will provide these documents after editing out taxpayer names, dollar amounts, advice and opinion, and "other confidential information." You expressly raise section 171.206 of the Tax Code and section 552.108 of the Government Code. Your reference to "advice and opinion" raises section 552.111 of the Government Code. We will also consider sections 111.006 and 151.027 of the Tax Code where these provisions apply.

You have sent two sets of copies of these memoranda for our review. In one set, you have marked out the items of information that you wish to withhold, while the other set of documents is unmarked. These memos include a weekly status report for the audit division of the comptroller's office, summarizing the work of the division for that week. Additional memos communicate information on office policies and practices to be followed by the auditors and on administrative hearings and lawsuits concerning state taxes.

⁹You cite federal cases providing that investigations of the Internal Revenue Service are excepted from disclosure under the "law enforcement" exception of the federal Freedom of Information Act, 5 U.S.C. § 552(b)(7). See *Williams v. IRS*, 479 F.2d 317 (3rd Cir.), cert. denied, 414 U.S. 1024 (1973). Unlike section 552.108 of the Government Code, the federal exemption for "records or information compiled for law enforcement purposes" applies to civil and regulatory proceedings as well as to criminal matters. See *Pope v. United States*, 599 F.2d 1383 (5th Cir. 1979); *Soucie v. David*, 448 F.2d 1067, 1078 n.45 (D.C. Cir. 1971).

The memos include reports that an auditor has collected a specific amount of money from an identified taxpayer. You have in each case deleted the amount of money and the name of the taxpayer. We will assume that the amount of taxes collected by an auditor in your office reflects information from a sales or use tax report submitted to the comptroller pursuant to section 151.403 of the Tax Code, information from a franchise tax report submitted pursuant to section 171.202 of the Tax Code, or information "secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees." Such information is confidential under section 111.006(b), 151.027, or 171.206 of the Tax Code. An amount of money collected from a taxpayer that derives from the tax report or from examination of the taxpayer is confidential under the cited Tax Code provisions and may not be disclosed.

In addition, we agree that certain other items of information that you have deleted are excepted from disclosure, and we have marked them accordingly. You have deleted your computer access codes. Open Records Decision No. 581 (1990) concluded that the source code and documentation to specific computer programs and computer program documentation standards required to be used by programmers were not subject to the Open Records Act. Your deletion of computer access codes is consistent with Open Records Decision No. 581.

You have marked certain information in one document that is relevant to criminal prosecutions of tax cases. We agree that release of this information "would unduly interfere with law enforcement efforts," Open Records Decision No. 493, and it may be withheld pursuant to section 522.108 of the Government Code.

We turn to the claim that some information constitutes internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body and is therefore excepted by section 552.111 of the Government Code. We agree that some items of information that you wish to withhold are within section 552.111, and we have marked them accordingly.

However, you have marked as confidential many items of information that are not excepted by section 552.108 or 552.111 of the Government Code or any of the three confidentiality provisions of the Tax Code. You seek to withhold instructions to auditors on how to deal with specific matters arising in taxpayer audits, statements of office policy that the auditors must follow in performing their work, and instructions on using form letters. (See documents numbered 2049-A01, 2050-B08, 2050-C02.)

Your letter states that "disclosure of audit strategy information and investigatory techniques might seriously weaken voluntary compliance with state tax law." For example, if one of the deleted memoranda indicates that some transactions are not

considered cost efficient to audit, you believe that public disclosure of that information might seriously impair voluntary reporting of such transactions. We acknowledge that these are important concerns, but the comptroller's office is not a law enforcement agency within section 552.108 of the Government Code, and thus it may claim this exception only in the limited circumstances where disclosure of the information will interfere with criminal law enforcement efforts. *See* Open Records Decision No. 531. You have not shown that disclosure of audit strategy information and investigatory techniques will interfere with criminal law enforcement of the tax laws.

The memoranda that set out office policy on conducting audits do not consist of "advice, recommendations, opinions, . . . [or] other material reflecting the deliberative or policymaking processes" of the governmental body. *See* Open Records Decision No. 615 at 5. They instead represent the end product of deliberations: a decision on how a particular aspect of the audit should be carried out and the communication of that decision to the auditors. Such communications are not excepted from disclosure by section 552.111 of the Open Records Act, and we have marked them accordingly.

The memoranda include references to taxpayers involved in administrative proceedings. As we stated in our reconsideration of Attorney General Opinion H-223, a taxpayer's name and other identifying information must be deleted from a final decision that adjudicates an administrative case. However, the mere statement that a named taxpayer is involved in an administrative hearing is not confidential, if it is not accompanied by confidential financial information. We have marked the documents accordingly.

The memos include references to the filing of motions, the date of hearings, settlements of litigation, and similar matters in judicial proceedings involving taxpayers. You have deleted the taxpayer's name and the style of the case from these references. We see no basis in the Tax Code confidentiality provisions or the Open Records Act exceptions you have cited for deleting this information, which is available to the public in the records of the judiciary.¹⁰

We assume that some of your deletions of taxpayer names reflect a diligent application of Attorney General Opinion H-223. Your office has deleted taxpayers' names in correspondence about matters not covered by the Tax Code confidentiality provisions, such as requests for information about the comptroller's rulings on tax matters. You have also deleted taxpayers' names from documents obtained from sources other than the sources covered by the confidentiality provisions, such as data received from the Federal

¹⁰*See Thomas v. United States*, 890 F.2d 18 (7th Cir. 1989); *Lampert v. United States*, 854 F.2d 335 (9th Cir. 1988), *cert. denied*, 490 U.S. 1034 (1989) (discussing public availability of tax return information after it has been introduced in a judicial proceeding or referenced in judicial decision).

Aviation Administration listing aircraft that have changed registration. Taxpayers' names in these instances are open to the public, and we have marked them accordingly.¹¹

The requestor also asked for the names of franchise taxpayers assessed a penalty in audits over the past six years and the amount of penalty assessed. You state that section 171.206 of the Tax Code requires you to delete names of taxpayers receiving penalties for late payment. Since the penalty for failure to pay the tax when due is directly proportionate to the amount of tax owed by a corporation, Tax Code § 171.362, you believe you cannot release the penalty information requested since that would show how much tax was owed. We agree that information about penalties assessed under section 171.362 would be made confidential by section 171.206 of the Tax Code as "information that is obtained from a record or other instrument that is required . . . to be filed with the comptroller" or by section 111.006 as "information secured, derived, or obtained by the comptroller . . . during the course of an examination of the taxpayer's books." Accordingly, you may not release the amount of penalty assessed against individual taxpayers.

The request also seeks auditor sign-out logs. You have not sent us copies of sign-out logs, but you describe these records as showing the day-by-day comings and goings and the field assignments of each auditor. Your office previously released some auditor sign-out logs to a private tax consultant and subsequently received many complaints from taxpayers contacted by the consultant because their names appeared on the log as being under audit. Your office would now like to withhold the auditor sign-out logs for two months before releasing them to the public, which would allow most audits to be finished before the logs are released, and you ask whether this is permissible under section 552.111 of the Open Records Act.

This office has stated that section 552.111 excepts from disclosure "only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes" of the governmental body. Open Records Decision No. 615 at 5; (discussed at page 9 above). It "does not except from disclosure purely factual information." *Id.* Auditor sign-out logs consist only of factual information.

In the alternative, you ask whether the auditor sign-out logs may be withheld under section 552.101 of the Government Code as information protected from disclosure by the Tax Code confidentiality provisions or by common-law privacy, or under section 552.108

¹¹Some information has been deleted that appears to be outside any of the exceptions that have been cited, for example, statistics about the amount of tax collected in a given period of time, the names of companies that may sell equipment to the comptroller's office, the names and titles of officers and employees of other state agencies, and the names of personnel of the comptroller's office who attend or speak at educational conferences. We have also marked these items of information as open to the public.

of the Government Code, as a record of a law enforcement agency maintained for internal use in enforcing the Tax Code.

Sections 111.006, 151.027, and 171.206 of the Tax Code do not apply to the auditor sign-out logs. The logs are created by the comptroller's office as records of the auditors' work. They do not include information derived from returns or reports submitted to the office by taxpayers or by the auditors by examining the taxpayer's records.

Section 552.101 of the Government Code also applies to information held confidential by judicial decision, including judicial decisions establishing the common-law tort of invasion of privacy through the disclosure of private facts. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To be within the common-law tort, the information must (1) contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) be of no legitimate concern to the public. *Id.* We do not believe that the audit logs, as you have described them, contain highly intimate or embarrassing facts about a person's private affairs. You have informed us that some taxpayers are chosen for audit by random selection; thus, the fact that a taxpayer is under audit does not necessarily reveal anything about the taxpayer or his business. Moreover, the persons who remit franchise taxes or taxes under the Limited Sales, Excise, and Use Tax are in many cases business entities, rather than individuals, *see* Tax Code § 171.001 (franchise tax is imposed on corporations), and the taxes they remit are imposed on business activities. Open Records Decision No. 192 (1978) stated that the "right of privacy is designed primarily to protect the feelings and sensibilities of human beings, rather than to safeguard property, business or other pecuniary interests," and concluded that release of a state agency's certification report concerning a private college did not infringe on any individual's privacy interest. The auditor sign-out logs contain far less information about the taxpayers subject to audit than did the certification report about the private college. We conclude that release of the fact that a taxpayer is being audited by the comptroller will not, as a general matter, infringe on an individual's privacy interest. *See* Open Records Decision No. 568 (1990) (tax information is not *per se* confidential). The auditor sign-out logs may not be withheld under section 552.101 of the Government Code pursuant to the common-law right of privacy.

The comptroller may claim section 552.108 of the Government Code only where disclosure of a particular sign-out log will interfere with criminal law enforcement efforts. *See* Open Records Decision No. 531 (1989). For example, section 552.108 might apply to pages of a sign-out log showing that the auditor had met with the local prosecutor to discuss a particular taxpayer. Except for sign-out logs that are related to a criminal law enforcement effort, so that disclosure of the information would unduly interfere with law enforcement, auditor sign-out logs are not within section 552.108 of the Government Code. With this exception, auditor sign-out logs must be made available to the requestor.

Your office next submitted to us a request for the names of payees of specific outstanding warrants issued by the comptroller's office. We have designated this matter ID# 20891. Your letter states as follows:

With one exception, all of the outstanding warrants on the enclosed list are refunds of taxes for overpayment. Warrants for overpayment may be issued as a result of an audit. This information in combination with other information available from this agency or other sources could allow calculation and determination of a particular taxpayer's assessment and thus potentially reveal information about the taxpayer's financial affairs and status.

You describe only a tenuous connection between the refund amount and taxpayer information made confidential by sections 111.006, 151.027, and 171.206 of the Tax Code. Unlike the penalty for late payment of franchise tax, which we have already discussed, the refund amount is not based on a statutory formula that can be used by members of the public to compute information found in confidential records. The refund amount is not itself information included in a taxpayer's reports or obtained by auditing his books. We conclude that the names of payees on refund warrants are not confidential pursuant to the Tax Code provisions you have cited.¹²

You have submitted several other requests for taxpayer information citing the Tax Code confidentiality provisions and Open Records Act exceptions that have been discussed in this decision. Since they raise legal issues raised that have been resolved in this decision, we will address them in an Open Records Letter.

¹²You also state that the name of a payee on a state warrant could be made confidential by court order. You state that this sometimes occurs in payment of settlements of judgments in tort cases. If a specific warrant is subject to a court order, please submit this matter to us with an explanation of how the court order makes the payee's name confidential.

S U M M A R Y

Sections 111.006, 151.027, and 171.206 of the Tax Code prohibit the release of information from or derived from taxpayer reports under the sales and use or franchise tax laws and from audits of taxpayers. The conclusion in Attorney General Opinion H-223 (1974) that the taxpayer's identity may not be disclosed in a final administrative decision is reaffirmed. To the extent that language in Attorney General Opinion H-223 and Attorney General Opinion JM-590 (1986) suggests that the comptroller may not disclose any information about the taxpayer's business affairs despite its lack of connection with the subject matter of sections 111.006, 151.027, and 171.206 of the Tax Code, those opinions are modified.

Yours very truly,



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