



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1995

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller of Public Accounts
LBJ State Office Building
P.O. Box 13528
Austin, Texas 78711-3528

OR95-1019

Dear Ms. Joseph:

The Office of the Comptroller of Public Accounts (the "comptroller") has asked this office to reconsider our ruling in OR95-938 (1995) wherein we concluded that because the comptroller failed to provide copies of the requested records for our review, the records were presumed to be public. Your request for reconsideration was assigned ID# 36031.

The comptroller received a request for information relating to an investigation of a specified individual. You claimed that portions of the requested information were excepted from required public disclosure under section 552.108 of the Government Code. We did not receive any documents for review. However, you have informed us that the comptroller submitted, in response to our request for the records, a detailed brief explaining the reasons why the documents should be withheld and why the documents could not be submitted for our review. You have resubmitted the brief, and based on the arguments contained therein, which we were unaware of in our original ruling, we conclude that the comptroller may withhold the requested information under section 552.108 of the Government Code.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information that relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983).

You claim that the requested documents relate to an on-going investigation by the comptroller and various law enforcement agencies. You further claim that there is a high probability of criminal prosecution in this matter and "anticipate that the matter will be referred to the Travis County District Attorney for further disposition." Because you have demonstrated that the requested records concern an on-going investigation that has a high chance of criminal prosecution by the Travis County District Attorney's Office, you may withhold the requested information. You may therefore disregard the conclusion reached in Open Records Letter No. 95-938 (1995). If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Loretta R. DeHay". The signature is written in a cursive, flowing style with a large initial "L".

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 36031

cc: Mr. R. Keith Cochran
11615 Forest Central Drive, Box 7
Dallas, Texas 75243