Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 11, 1995

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
LBJ State Office Building
111 E. 17th Street
Austin, Texas 78774

OR95-1068

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35835.

The Comptroller of Public Accounts (the "Comptroller") received a request for "copies of audits and audit plans relating to the gasoline and diesel fuel audits of the operations of Joe R. Powell." You assert that the requested information is excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code.

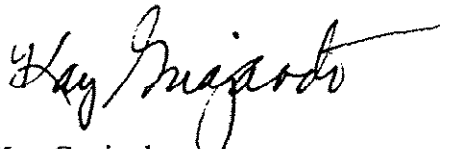
Section 552.101 of the Government Code excepts from required public disclosure information that is made confidential by statute. Section 111.006(a)(2) of the Tax Code makes confidential

> 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.

See Tax Code § 111.006(a)(2).[1] This provision prevents the disclosure of information and data "obtained" or "derived" from a taxpayer. *See A & T Consultants, Inc. v. Sharp* 904 S.W.2d 668 (Tex. 1995). The bulk of the information you enclosed consists of information "obtained" or "derived" from the taxpayer. We, therefore, conclude that the Comptroller must withhold that information from required public disclosure based on section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code. We have marked a sample of the documents accordingly.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 35835

Enclosures: Marked documents

cc: Chris E. Ryman
Coats, Rose, Yale, Holm, Ryman & Lee
800 First City Tower
1001 Fannin
Houston, Texas 77002-6707
(w/o enclosures)

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[1]Subsection (b) of section 111.006 of the Tax Code provides that information made confidential by title 2 of the Tax Code may not be subject to subpoena directed to the comptroller or the attorney general except in a judicial or an administrative proceeding in which this state, another state, or the federal government is a party. In addition, the Seventy-fourth Legislature amended section 111.006 by adding two subsection (d)'s, both of which provide for the release of information made confidential by section 111.006(a)(2) in certain circumstances. *See* Act of May 19, 1995, 74th Leg., R.S., ch. 351, § 4, 1995 Tex. Sess. Law Serv. 2881 (Vernon) (to be codified as an amendment to Tex. Tax Code § 111.006); Act of May 12, 1995, 74th Leg., R.S., ch 175, § 1, 1995 Tex. Sess Law Serv. 1888 (Vernon) (to be codified as an amendment to Tex. Tax Code § 111.006). These amendments and subsection (b) of section 111.006 are not relevant here.