



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1995

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

OR95-1157

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# 36404.

The Comptroller of Public Account (the "Comptroller") received a request for a copy of a certain taxpayer's audit file. You assert that the Comptroller may withhold the requested information from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code. You inform us that the Comptroller referred the taxpayer's case to the Harris County District Attorney for possible criminal fraud prosecution. You say the referral resulted from acts discovered in the sales tax audit.

Section 552.108(a) generally applies to records of a law-enforcement agency or prosecutor that deal with the detection, investigation or prosecution of crime. However, in certain circumstances, an agency that is not a law-enforcement agency may claim section 552.108. This office has determined that if an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report or already has reported to the appropriate law-enforcement agency, section 552.108 will apply to the information gathered by the administrative agency if its release would unduly interfere with law enforcement. See Open Records Decision No. 493 (1988).

The Comptroller may withhold from disclosure audit papers pursuant to section 552.108 to protect the Comptroller's interest in enforcing the tax laws. *A & T Consultants v. Sharp*, 904 S.W.2d 668 (Tex. 1995). Accordingly, we conclude that section 552.108 of the Government Code exempts the requested information from required public disclosure.

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,

A handwritten signature in black ink that reads "Kay Guajardo". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 36404

Enclosures: Submitted documents

cc: Mr. John D. Christian
Attorney at Law
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(w/o enclosures)