



Office of the Attorney General

State of Texas

April 10, 1996

DAN MORALES  
ATTORNEY GENERAL

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

OR96-0527

Dear Ms. Joseph:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35302.

The Comptroller of Public Accounts (the "comptroller") received a request for information pertaining to an audit. You indicate the requestor has received several responsive documents, but you contend that portions of the auditor's audit plan must be withheld from disclosure. You explain that the audit plan is a chronology of all the events that occur during an audit, detailing the audit procedure, reasons to deviate from procedure, and the auditor's own notations, findings and recommendations. You have marked portions of the audit plan that you contend are excepted from disclosure pursuant to section 552.111 and the informer's privilege aspect of section 552.101 of the Government Code. You also assert that some of the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with confidentiality provisions of the Tax Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 111.006(a)(2) of the Tax Code provides, in pertinent part:

(a) Except as provided by Subsection (d), 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:

(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.

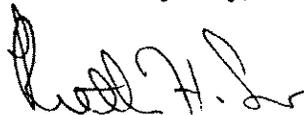
This provision makes confidential information obtained or derived from taxpayer records. *See A & T Consultants v. Sharp*, 904 S.W.2d 668 (Tex. 1995). Sections 151.027 and 171.206 of the Tax Code also make confidential information that is obtained or derived from taxpayer records relating to sales and use taxes and franchise taxes, respectively. Sections 151.027 and 171.206 also provide for the confidentiality of information required to be filed with the comptroller or obtained during an examination of records. We have reviewed the information submitted and have marked the entries that are confidential. The marked information must be withheld from disclosure.

You assert that one of the entries in the audit plan should be withheld under the informer's privilege aspect of section 552.101. This privilege excepts information from disclosure to the extent necessary to protect an informer's identity. *Rovario v. United States*, 353 U.S. 53 (1957); Open Records Decision Nos. 549 (1990) at 5, 202 (1978) at 2 (informer's privilege exception is not applicable when the identity of the informer is known to the subject of the communication). We agree that the entry dated "8-6-90" may be withheld from disclosure under the informer's privilege.

You also claim that section 552.111 excepts from disclosure some of the audit plan entries. Section 552.111 excepts from disclosure internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 (1993). We agree that some of the marked entries are excepted from disclosure pursuant to section 552.111. We have marked information that may be withheld from disclosure pursuant to section 552.111. The other information must be disclosed.

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 35302

Enclosures: Submitted documents

cc: Mr. Oscar Garza  
GE Client Business Services  
Post Office Box 60500  
Fort Myers, Florida 33906-6500  
(w/o enclosures)