

January 28, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
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Ms. Sandra Joseph
Open Records/Disclosure Officer
Comptroller of Public Accounts
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OR99-0255

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code (the "Act"). Your request was assigned ID # 121720.

The Comptroller of Public Accounts (the "comptroller") received a request for a certified copy of the final Comptroller's Decision in hearing number 21,401¹ and for "copies of any completed reports, audit evaluations, and any correspondence, memos, and/or notes exchanged between the comptroller's office and . . . [the taxpayer] regarding the above referenced investigation." The comptroller seeks to withhold portions of the requested information based on section 552.101 of the Government Code. You submit to this office the requested information as Enclosures 2 and 3, marked to indicate the information you seek to withhold.

Section 552.101 of the Government Code 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 that information is confidential when it is "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

¹You acknowledge a legal obligation to provide a certified copy of a document upon request. Gov't Code § 603.002. You also state that the final Comptroller Decision has been released to the public in a de-identified format.

affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.” Tax Code § 111.006(a)(2).² We have considered the exception you claim and have reviewed the documents at issue.

Enclosure 2, documents compiled by the comptroller’s staff in connection with the taxpayer’s sales tax audit, includes eight items or categories of documents, marked to indicate information in the documents that the comptroller obtained from the taxpayer during its examination of the taxpayer. We agree with the comptroller’s markings of the documents in Enclosure 2. This information is confidential under section 111.006(a)(2) of the Tax Code.

Enclosure 3, the hearing file for the taxpayer, consists of the taxpayer’s statement of grounds, the Tax Division’s position letter, correspondence between the Tax Division and the taxpayer, the Comptroller’s Decision and the Corrected Comptroller Decision. We agree with the comptroller’s markings of information in Enclosure 3 except as follows: (1) all correspondence from the taxpayer should be withheld in its entirety pursuant to section 111.006 of the Tax Code, (2) hearing numbers must be redacted from all of the documents except the Position Letter, Comptroller’s Decision, and Corrected Comptroller’s Decision, (3) Each reference to the taxpayer’s contact and each note indicating the taxpayer’s response to the comptroller’s audit must be redacted (two instances of this information appear to be unmarked inadvertently), and (4) pursuant to section 552.101, the comptroller must withhold only the information that identifies the taxpayer in the Position Letter, the Comptroller’s Decision and the Corrected Comptroller’s Decision. The comptroller must release the text of the Position Letter, the Comptroller’s Decision, and the Corrected Comptroller’s Decision.

The comptroller’s decisions have been ruled public in the past. *See* Attorney General Decision No. H-223 (1974) (requiring comptroller to de-identify administrative hearing decisions under predecessor of Tax Code section 111.006). The Decision and Corrected Decision have already been published in the comptroller’s tax research database with all identifying information redacted. Position letters in uncontested cases are published in the comptroller’s database and

²You also cite Tax Code section 151.027(b) in footnote eight of your letter and in your identification of the statutory bases for withholding specific items of information. Section 151.027 deems confidential “information in or derived from a record, report, or other instrument required to be furnished under [Tax Code chapter 151, The Limited Sales, Excise, and Use Tax Act]” and “[i]nformation 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.” Tax Code § 151.027(a), (b).

position letters in contested cases are made available upon request.³ See Open Records Letter Nos. 98-0957 (1998), 96-2203 (1996) (requiring comptroller to de-identify position letters).

You note that the requestor knows both the taxpayer's identity and the hearing number because the taxpayer gave the requestor a copy of the proposed decision, making it impossible to release the text of the Comptroller Decision and the Corrected Comptroller Decision and maintain the confidentiality of the taxpayer information. The Act prohibits a governmental body from treating one requestor differently than any other requestor.

The comptroller may not know and cannot control the information in the possession of the requestor at the time of the request. Indeed, the information in the possession of the requestor at the time of the request is not relevant to a determination of the duty of the government body receiving a request for information. The governmental body must treat all requests for information uniformly. Information that a governmental body collects, assembles, or maintains is, in general, either open to all members of the public or closed to all members of the public. Section 552.223 of the act provides

“The officer for public information or the officer's agent shall treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.”

In addition, section 552.007 prohibits the comptroller from selectively disclosing information that is not confidential by law but that a governmental body may withhold under an exception to section 552.021 of the Government Code.

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) must be made available to any person.

Gov't Code § 552.007. See also Open Records Decision No. 463 at 1-2 (1987). You must release the de-identified Position Letter, Comptroller's Decision and Corrected Comptroller's Decision to the requestor.

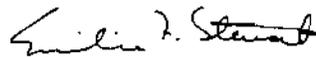
³ Telephone interview with Scott Fawcett, Legal Counsel, Open Records Division, Comptroller of Public Accounts (December 9, 1998).

To summarize, all of the information you have marked is protected from disclosure under section 552.101 with the exception of the de-identified copies of the Position Letter and the Comptroller's Decision and Final Decision. In addition, the comptroller must withhold from the requestor all correspondence from the taxpayer to the comptroller. The comptroller must redact all references to or notes of the taxpayer's contact and the taxpayer's response to the audit. The comptroller must also redact the hearing numbers from documents in the hearing file other than those routinely released to the public in a de-identified form.

To the extent that we disagree with your markings, we have marked the documents to indicate the information that must be withheld and the information that must be released.

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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 117720

Enclosures: Submitted documents

cc: Mr. Frank Herrera
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(w/o enclosures)