



December 3, 1999

Ms. Ruth H. Soucy  
Manager, Open Records Division  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR99-3478

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130083.

The Comptroller of Public Accounts (the “comptroller”) received a request for “correspondence with Mr. Freeman and Echo Communication, Inc., investigations, audit(s), responses.” You submitted a report and a representative sample of the responsive correspondence to this office for review.<sup>1</sup> You contend that the responsive information is excepted from disclosure by section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code, and by section 552.108 of the Government Code.

We initially note that the Public Information Act requires a governmental body that wishes to withhold requested information to provide the Attorney General with a signed statement of the date the request for information was received by the governmental body, or sufficient evidence to establish that date, within fifteen business days of the governmental body’s receipt of the request for information. Gov’t Code § 552.302(c)(1)(3). If the governmental body does not comply with the requirements of Government Code section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov’t Code

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

§ 552.302. In this case, you have not provided a statement of when the subject request for information was received. The request for information is dated "September 18, 1999" and a cover letter indicating that the request was forwarded is date stamped "SEP 20 1999." Thus, we cannot determine the date of receipt of this request from the evidence provided. The information must be released unless there is a compelling reason to withhold it. A compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). In this case, you assert that portions of the responsive information are made confidential by other law and are excepted from public disclosure by section 552.101. We shall address this argument and review the submitted information.

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 of the Tax Code reads in pertinent part,

- (a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b), (d), or (e):

...

- (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.

In determining the application of this statute to information requested under chapter 552 of the Government Code, we must determine the source of the information. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995). Information obtained from a taxpayer in the course of an audit is made confidential by this statute; information otherwise obtained is not. *Id.* You relate that the submitted report is a draft produced in an ongoing audit being conducted by the comptroller. We find that this report; the "field assignment" document and attached notes; and any materials that were obtained from the subject tax payer in the course of this audit, are made confidential by section 111.006 of the Tax Code, and must be withheld under section 552.101 of the Government Code. We further find that the submitted correspondence item dated September 18, 1999, with a notation that it was copied to your attention, along with the attachment to that correspondence, was not obtained or derived from the taxpayer and is therefore not excepted from disclosure by these provisions and 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Burns", with a stylized flourish at the end.

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 130083

Encl. Submitted documents

cc: Ms. Karen Kay Kristopher  
Surrogate Legal Search Services  
6524 San Felipe, #503  
Houston, Texas 77057  
(w/o enclosures)