



November 22, 2000

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2000-4512

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# 141744.

The Comptroller of Public Accounts (the "comptroller") received a request for: (1) a list of all open records requestors for a specified period of time, (2) a list of all audits in progress, (3) a list of all completed audits, and (4) a list of active administrative hearings and their status. You state that you have provided information responsive to the first, third, and fourth categories of the request. However, you claim that information responsive to the second category of the request is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). In *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995), the Texas Supreme Court held that the comptroller could withhold from disclosure audit papers pursuant to section 552.108 to protect the comptroller's interest in enforcing the tax laws. *Id.* at 677. You inform us that the requested information pertains to ongoing audits. You also state that once an audit has been assigned a lead auditor and the taxpayer is notified of the pending audit, the fact of the

¹The comptroller also requests that this office issue a "previous determination" as to the type of information at issue here. We decline to issue such a ruling at this time.

audit is public. We therefore believe that the release of the information concerning the pending audits where the taxpayer has not yet been notified “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108. Therefore, you may withhold the requested list of audits in progress under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

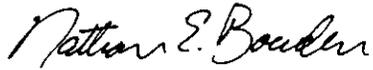
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 141744

Encl: Submitted documents

cc: Mr. Clinton J. David
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(w/o enclosures)