



December 11, 2000

Mr. Sam Haddad
Assistant General Counsel
Open Government
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2000-4661

Dear Mr. Haddad:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID#142030.

The Comptroller of Public Accounts (the “comptroller”) received a request for (1) a listing of all signed participants in the managed audit program, including the taxpayers’ names, numbers, and addresses, as well as the dates signed, categories of coverage, and any other data components, and (2) a listing of all completed managed audits. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You claim that the information contained in the requested material is confidential under sections 111.006 and 151.027 of the Tax Code. Section 151.027(b) provides that “[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, is confidential.” You contend that some of the submitted information was obtained or derived during an

¹In reaching our conclusion here, we assume that the “representative sample” of the requested records the requestor 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.

examination of the records of the identified taxpayers without identifying this information. We agree that information in the submitted documents indicating the amount of assessed deficiencies, refunds, or credits was derived from taxpayer information, and is therefore confidential. *See A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 680 (Tex. 1995). However, we are unable to identify any other information secured, derived, or obtained by the comptroller during examinations of the taxpayers' books, records, papers, officers, or employees. *See* Tax Code § 151.027(b); *see also id.* § 111.006(a)(2). We have marked the information you may withhold under section 151.027(b) of the Tax Code.²

We will address your claim under section 151.027(a) of the Tax Code with respect to the remainder of the information. Section 151.027(a) provides that “[i]nformation in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection” Under section 151.0231 of the Tax Code, the comptroller has the discretion to authorize a taxpayer to conduct a managed audit. A “managed audit” is defined as “a review and analysis of invoices, checks, accounting records, or other documents or information to determine a taxpayer’s liability for tax under [chapter 151 of the Tax Code].” Tax Code § 151.0231(a). In order to authorize such an audit, the comptroller must sign an agreement with the taxpayer that specifies the period to be audited and the procedure to be followed. *Id.* § 151.0231(c). You contend that the submitted information was required to be submitted pursuant to the managed audit agreements and is therefore confidential under section 151.027(a) of the Tax Code. We disagree. While section 151.0231 requires the execution of an agreement before a managed audit can be performed, it does not require records, reports, or other instruments to be furnished by taxpayers. Furthermore, we cannot determine from the face of the documents, nor have you provided us any information to indicate, whether any of the information that was not excepted under section 151.027(b) of the Tax Code was required to be furnished under chapter 151 of the Tax Code. Therefore, you may not withhold the remaining information under section 151.027(a) of the Tax Code.

You also contend that much of the remaining information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime” if “release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code 552.108(a)(1). The comptroller is a law enforcement agency for purposes of administering the Tax Code. *A & T Consultants, Inc.*, 904 S.W.2d at 678-679. In *A & T Consultants*, the court agreed that the comptroller uses audits to further the comptroller’s law enforcement objectives. *Id.*

²Based on this finding, we need not reach your similar claim of confidentiality under section 111.006 of the Tax Code.

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a), (b), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that "a portion of the requested information pertains to ongoing audits and release at this time would interfere with such examinations." You also correctly point out that it is generally presumed that release of information will interfere with law enforcement when the information pertains to an ongoing investigation. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). However, that rule applies in the traditional context in which the law enforcement agency itself, or a governmental body that intends to report or has already reported possible criminal conduct to a law enforcement agency, is conducting the investigation. It has not been applied in the unique context, such as here, where the subject of the investigation is also conducting the investigation, albeit under the management of a law enforcement agency. Under the managed audit system, the taxpayer conducts the audit subject to the examination and review of the comptroller. *See* Tax Code § 151.0231. In this context, we do not believe that the presumption of interference applies. Furthermore, you have failed to establish, beyond your assertion that the requested information pertains to ongoing audits, how release of the requested information would interfere with the detection, investigation, or prosecution of crime. Therefore, we find that none of the remaining information is excepted from disclosure under section 552.108 of the Government Code.

In summary, while you may withhold certain marked information in the submitted documents that was secured, derived, or obtained by the comptroller during examinations of the taxpayers' books, records, papers, officers, or employees, the remainder of the information must be released.

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).

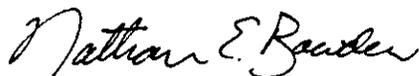
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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# 142030

Encl: Submitted documents

cc: Mr. Tommy J. Morgan, Proprietor
State Tax Management & Review
1411 Grinnell
Dallas, Texas 75216
(w/o enclosures)