



June 5, 2001

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

OR2001-2312

Dear Mr. Haddad:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148005.

The Comptroller of Public Accounts (the “comptroller”) received a request for information, submitted in the form of three questions. The first question relates to the meaning of the phrase “in terms of tax paid.” The next two questions relate to the dollar-amount cut-off established by the Audit Division in determining whether taxpayers fall within priority I or II for purposes of scheduling audits.

We first note that the Public Information Act does not require a governmental body to prepare answers to questions or to do legal research. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). On the other hand, a request for records made pursuant to the Public Information Act may not be disregarded simply because a citizen does not specify the exact documents he desires. A governmental body should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow the request. *See* Open Records Decision No. 87 (1975). In this regard, you assert that the comptroller does not have information responsive to the first question posed by the requestor, but inform us that the comptroller has been able to retrieve information responsive to questions two and three. You claim that the responsive information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 excepts from disclosure information 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's office is a law enforcement agency that "uses audits to further [its] law enforcement objectives" in enforcing tax laws. *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 679 (Tex. 1995).

Generally, a governmental body claiming 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)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the categorization of a company as falling within Priority I or II is one of the factors that the Audit Division uses in determining which taxpayers will be audited and with what frequency. You further assert that "in the case of dollar cut-off amounts, if the requested information were released, taxpayers could determine whether they were Priority I or II and could plan for possible audits accordingly, thus diminishing [the comptroller's] ability to successfully enforce the tax laws." Based upon your representations, we find that release of the information concerning the dollar cut-off amounts between Priority I and II "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1); *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 2d 668 (Tex. 1995). Thus, the comptroller may withhold the requested information under section 552.108(a)(1) of the Government Code.

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 Department of Public 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 148005

Encl. Submitted documents

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