



September 19, 2001

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

OR2001-4191

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# 152165.

The Comptroller of Public Accounts (the "comptroller") received a request for "a listing of completed tax audits of taxpayers audited between the period March 31, 2001 - June 30, 2001." The requestor seeks access to 18 specified categories of information. You inform this office that most of the requested information has been released. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the representative sample of information you submitted.¹

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 exception protects information that another statute makes confidential. Section 111.006(a)(2) of the Tax Code provides that 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," is confidential. Tax Code § 111.006(a)(2).²

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the comptroller to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²Chapter 151 of the Tax Code, which pertains to sales, excise, and use tax, also has a similar confidentiality provision. See Tax Code § 151.027(b). Thus, the information made confidential under section 151.027 is co-extensive with information deemed confidential under section 111.006.

You inform this office that the comptroller has disclosed the fact that a particular audit resulted in a deficiency, a credit, or no adjustment. You contend, however, that the request for the "tax adjustment" could be construed as seeking the amount of adjustment, if any, for each audit. You assert that the amount of a deficiency or a credit is confidential under section 111.006. We agree. We therefore find that to the extent that category 17 seeks the amounts of tax adjustments, these amounts are confidential under section 111.006(a)(2) of the Tax Code and thus must be withheld under section 552.101 of the Government Code. See *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 680 (Tex. 1995) (concluding that it strikes proper balance between Tax Code and Public Information Act for comptroller to disclose that audits resulted in deficiency assessment or refund warrant, but not to disclose amounts of assessment or refund).³

You also raise section 552.108 of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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.*, the Texas Supreme Court held that the comptroller could withhold from disclosure the reason for a particular audit and the audit method employed. With regard to the reason for an audit, the Supreme Court stated:

The comptroller can select from several reasons for [conducting an audit]. For scheduled upcoming audits and those in progress, these reasons are part of audit working papers, exempt from disclosure until the audits are completed. More importantly, the reasons for performing an audit reflect that the comptroller uses audits to further h[er] law enforcement objectives. They are thus made confidential not by the Tax Code, but by section 552.108 of [the Public Information Act], which excepts from disclosure those records generated by the comptroller in the process of enforcing the tax laws.

A&T Consultants, Inc., 904 S.W.2d at 678-79 (citations omitted). As for the audit method that the comptroller employs, the Supreme Court also said in *A&T Consultants, Inc.*:

The audit method . . . remain[s] confidential before, during, and after the comptroller undertakes taxpayer audits. Selecting an audit method constitutes the comptroller's choice about the strategy that [s]he will use in an audit. . . . Effective enforcement of the tax laws rests in part on a taxpayer's inability to predict the approach of a tax examination and the focus of an audit. Therefore, since disclosure of the choice of an audit method . . . will jeopardize the comptroller's effectiveness, th[is] categor[y] of information [is] excepted from release[.]

Id. at 679 (citations omitted).

³We note, however, that the submitted representative sample of requested information does not appear to contain the amount of a tax adjustment, but only reflects whether there was in fact a credit, a deficiency, or no adjustment.

You note that the requestor asks for the audit reason in category 10. You also point out that after asking in category 18 for the "Detail/Sample designation," the requestor specifies: "[P]lease add the additional field to designate[] if sample was performed in accordance with 111.0042. A designation of '1' to indicate no sampling in any areas of examination or a designation of '2' to indicate a sampling of an area of the examination was performed." You contend that "[i]n asking for this 'detailed' versus 'sampling' information, the requestor is essentially asking for audit method codes." You argue that both this information and the reasons for audits are protected from disclosure under section 552.108. Having considered your arguments, we agree that the release of information responsive to categories 10 and 18 "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Therefore, the comptroller may withhold this information under section 552.108(a)(1) of the Government Code.

In summary, responsive information relating to the amounts of tax adjustments is confidential under section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code. The requested information relating to audit reasons and methods is excepted from disclosure under section 552.108. Any other responsive information that the comptroller has withheld from this requestor is not excepted from disclosure and 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).

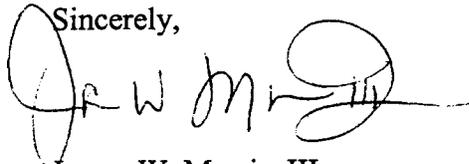
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "J W Morris III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 152165

Enc: Submitted documents

c: Mr. Tommy J. Morgan
State Tax Management & Review
1411 Grinnell
Dallas, Texas 75216-6226
(w/o enclosures)