



OFFICE of *the* ATTORNEY GENERAL  
GREG ABBOTT

May 28, 2003

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

OR2003-3587

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# 181778.

The Comptroller of Public Accounts (the "comptroller") received a request for "a listing of completed tax audits of taxpayers audited between the period JAN 1, 2003 - FEB 28, 2003." The requestor seeks access to 17 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.<sup>1</sup>

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

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<sup>1</sup>This 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).

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).<sup>2</sup>

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 of the request 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).

You also raise section 552.108 of the Government Code. This office has stated that certain procedural information may be withheld under section 552.108(b) of the Government Code or its statutory predecessors. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To demonstrate the applicability of section 552.108(b), a governmental body must explain, if the requested information does not supply an explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 508 at 4 (1988); *cf. City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet. h.) (Section 552.108(b)(1) protects "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State."). Further, section 552.108(b)(1) does not protect information that relates to commonly known policies and

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<sup>2</sup>Chapter 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.

techniques. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

To prevail on a claim that section 552.108(b)(1) excepts information from public disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984).

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). You note that the requestor asks for the audit reason in category 10 of the request, and argue that this information is protected from disclosure under section 552.108 because the “release of the reasons for each audit would reveal the [comptroller]’s internal law enforcement methods, strategies, and reasoning, which would affect the [comptroller]’s effectiveness in enforcing state tax laws.” Having considered your arguments, we agree that the release of information responsive to category 10 regarding audit reasons would interfere with law enforcement. Gov’t Code § 552.108(b)(1). Therefore, the comptroller may withhold this information under section 552.108(b)(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 reason codes 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.

You also request that this office issue a previous determination allowing the comptroller to withhold the amounts of tax adjustments under section 552.101 and audit reason codes under section 552.108 of the Government Code. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the amounts of tax adjustments contained in a listing of completed tax audits are confidential under section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). The comptroller may also rely on this ruling as a previous determination under section 552.301(a) that audit reason codes contained in a listing of completed tax audits are excepted from disclosure under section 552.108(b)(1). *Id.* Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the comptroller need not ask for a decision from this office again with respect to this type of information requested of the comptroller under Chapter 552 of the Government Code. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

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Enc. Submitted documents

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