



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 9, 2009

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

OR2009-14326

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 357847.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for twenty categories of information relating to completed tax audits. You state you have released the information responsive to nineteen of the categories in the request. You claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments concerning disclosure of requested information).

You raise section 552.108 of the Government Code for portions of the submitted information. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection,

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<sup>1</sup>We assume that the representative sample of records 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.

investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108 (a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is the investigation of crimes and enforcement of criminal laws. *See Open Records Decision Nos. 493 (1988), 287 (1981)*. Section 552.108 is generally not applicable to records created by an agency whose chief function is essentially regulatory in nature. *See Open Records Decision No. 199 (1978)*. The comptroller is a law enforcement agency for purposes of administering the Tax Code. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-679 (Tex. 1995). In *A & T Consultants, Inc.*, the Texas Supreme Court held that the comptroller could withhold from disclosure the audit method code for a particular audit. The Supreme Court stated:

[t]he 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, this category of information is excepted from release by [section 552.108].

*Id.* at 679 (citations omitted). We therefore find the release of audit method codes “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Accordingly, the comptroller may withhold the audit method codes pursuant to section 552.108(a)(1) of the Government Code.<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure.

You also ask this office to issue a previous determination allowing the comptroller to withhold the audit method codes under section 552.108(a)(1) of the Government Code without seeking a ruling from this office. 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 audit method codes are excepted from disclosure under section 552.108(a)(1). *See Gov’t Code § 552.301(a), (f); see also Open Records Decision No. 673 (2001)*. The comptroller may consider this ruling a previous determination for such information for as long as the elements of law, fact, and circumstances on which this ruling

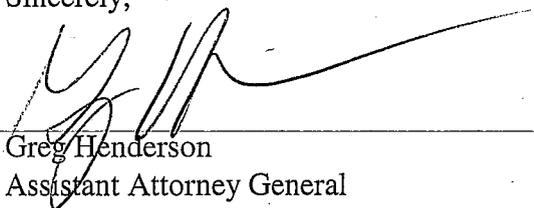
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<sup>2</sup>Although the requestor has asked for the information in a particular format, we note that the Act does not generally require a governmental body to produce information in the particular format requested. *See A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975).

is based do not change so as to no longer support our conclusion. *See* Gov't Code § 552.301(a), (f); *see also* ORD 673 at 7.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/rl

Ref: ID# 357847

Enc. Submitted documents

c: Requestor  
(w/o enclosures)