



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 6, 2010

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

OR2010-00230

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# 366422 (Comptroller ID# 5962996647).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for all documents concerning the sales tax fraud investigation of the requestor's client. You state the comptroller has released certain information. You state you have redacted social security numbers from the responsive information pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim the remaining submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that portions of the submitted documents, which we have marked, are not responsive as they were created after the receipt of the instant request. The comptroller need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.108(a)(1) 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, 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

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<sup>1</sup>Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

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. *See A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-79 (Tex. 1995). You inform us that the information at issue pertains to a pending criminal investigation regarding tax compliance. Therefore, we agree that section 552.108(a)(1) is applicable to the submitted information.

As you acknowledge, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of basic information, which you state has been released, the comptroller may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/jb

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<sup>2</sup>As our ruling is dispositive, we do not address your other arguments against disclosure.

Ref: ID# 366422

Enc. Submitted documents

c: Requestor  
(w/o enclosures)