



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2010

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

OR2010-02059

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# 369944 (Comptroller ID# 6016997926).

The Comptroller of Public Accounts (the "comptroller") received a request for documentation supporting a demand for repayment of certain sales tax funds erroneously collected by the City of Elmendorf. You claim portions of the submitted tax audit information are excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have marked portions of the submitted information as being non-responsive to the request for information. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, you assert the responsive portion of the submitted tax audit spreadsheet created during an audit conducted under section 111.004 of the Tax Code is excepted from disclosure pursuant to a previous determination issued by this office to the comptroller in Open Records Letter No. 2007-10491 (2007). That ruling serves as a previous determination under section 552.301(a) of the Government Code and allows the comptroller to withhold under section 552.116 of the Government Code audit working papers created during the course of an audit conducted under the authority of section 111.004 of the Tax Code. Therefore, pursuant to Open Records Letter No. 2007-10491, the comptroller may withhold the

submitted information you have indicated under section 552.116 of the Government Code.¹ *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 151.027 of the Tax Code, which provides in part:

(b) Information secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees, including the business affairs, operations, profits, losses, and expenditures of the taxpayer, is confidential and not open to public inspection except as provided by Subsection (c) of this section.

Tax Code § 151.027(b). You state the remaining responsive information was secured, derived, or obtained by the comptroller during the course of a sales and use tax audit conducted under the authority of section 111.004 of the Tax Code. You also state none of the exceptions to disclosure in section 151.027(c) apply in this instance. Based on your representations and our review, we find the information at issue was obtained during the course of an examination of the taxpayer's records for purposes of section 151.027 of the Tax Code. Therefore, the comptroller must withhold the remaining responsive information under section 552.101 of the Government Code in conjunction with section 151.027 of the Tax Code.² *See* Attorney General Opinion H-223 (1974).

In summary, pursuant to Open Records Letter No. 2007-10491, the comptroller may withhold the submitted responsive information you have indicated under section 552.116 of the Government Code. The comptroller must withhold the remaining responsive information under section 552.101 of the Government Code in conjunction with section 151.027 of the Tax Code.

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.

¹As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for this information.

²As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for this information.

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, 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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 369944

Enc. Submitted documents

c: Requestor
(w/o enclosures)