ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2010

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

OR2010-02476

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# 371223 (Comptroller ID#s 6042595578 & 6065448245).

The Texas Comptroller of Public Accounts (the "comptroller") received two requests from the same requestor for several categories of information relating to two specified taxpayer numbers. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant requests because it was created after the comptroller received the requests. This ruling does not address the public availability of information that is not responsive to the requests, and the comptroller is not required to release that information in response to the requests.

Next, we address the requestor's contention that the comptroller failed to follow its procedural obligations under sections 552.301(b) and 552.301(e) of the Government Code with respect to the second request. Section 552.301 prescribes the procedures that a

governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D).

The comptroller states that it received the second request for information on December 7, 2009. The comptroller informs us that December 24 and 25, and January 1 were comptroller holidays. Also, the comptroller observed skeleton days on December 23 and 31. Accordingly, the comptroller's ten-business-day deadline with respect to the second request was December 21, 2009. Although the requestor asserts that the comptroller did not timely raise section 552.108 as an exception to disclosure, we note the comptroller hand-delivered the information required under section 552.301(b) to this office on December 18, 2009. The comptroller's fifteen-business-day deadline was January 4, 2010, which is the date the comptroller hand-delivered the information required under section 552.301(e) to this office. Accordingly, we find that the comptroller complied with the procedural requirements of sections 552.301(b) and 552.301(e).

The requestor also asserts that the comptroller failed to comply with section 552.301(e-1) of the Government Code. Section 552.301(e-1) requires a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1). Although the requestor asserts that the comptroller did not timely comply with the requirements of section 552.301(e-1), the comptroller indicates from its correspondence that it timely sent its notice of the request for a decision on December 18, 2009. Whether the comptroller timely sent a copy of the written comments to the requestor is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *Id.* Therefore, based on the comptroller's representations and our review, we conclude that the comptroller complied with the procedural requirements of section 552.301 in requesting this ruling, and we will address the comptroller's argument against disclosure of the submitted responsive information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "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." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). 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, 678-79 (Tex. 1995).

This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You assert the submitted responsive information excepted from disclosure under section 552.108(b)(1). You state the information at issue consists of internal records used by the comptroller's enforcement division for tax collection. You also state disclosure of the information at issue would hinder law enforcement investigative efforts by revealing the comptroller's investigation and tax collection methods. Based on your arguments and our review, we agree that release of the submitted responsive information would interfere with law enforcement. Thus, the comptroller may withhold the submitted responsive information under section 552.108(b)(1) of the Government 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.

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,

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 371223

Enc. Submitted documents

cc: Requestor
(w/o enclosures)