



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2010

Mr. James G. Nolan  
Open Records Attorney  
Open Records Division  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2010-06418

Dear Mr. Nolan:

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#378969 (CPA ID#6190068687).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for all information pertaining to a specified criminal complaint filed with the comptroller. You state you have released a portion of the information responsive to this request. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(2) of the Government Code excepts from public disclosure "[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(2). 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). You inform us that the submitted information pertains to a criminal investigation regarding tax compliance. You further inform us that the investigation is closed and that it did not result in either conviction or deferred adjudication. Therefore, we agree that section 552.108(b)(2) is applicable to this 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. 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.*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, the comptroller may withhold the submitted information under section 552.108(b)(2) of the Government Code. However, you contend portions of the basic information in this instance are excepted from disclosure under the Tax Code.

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 protected by other statutes, including sections 111.006 and 171.206 of the Tax Code. Section 111.006 of the Tax Code protects from disclosure the following types of taxpayer information obtained from an audit of a taxpayer:

all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's book, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

Tax Code § 111.006(a)(2). Section 171.206 of the Tax Code provides that the following information is generally excepted from disclosure:

- (1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or
- (2) information, including information about the business affairs, operations, profits, losses, cost of goods sold, compensation, or expenditures of a taxable entity, obtained by an examination of the books and records, officers, partners, trustees, agents, or employees of a taxable entity on which a tax is imposed by this chapter.

*Id.* § 171.206. The question of whether franchise tax refund amounts are excepted from public disclosure under the Act was addressed by the Texas Supreme Court in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-679 (Tex. 1995). The Supreme Court addressed the applicability of sections 111.006 and 171.206 of the Tax Code to the Act:

The Tax Code prevents the disclosure of data “obtained” or “derived” from a taxpayer . . . Confidentiality under the Tax Code thus turns on the identity of the *source* of the information. It makes confidential the information obtained or derived from *taxpayers*.

*Id.* at 676 (citations omitted) (emphasis in original). The court concluded that:

[T]he amounts of assessed deficiencies, refunds, or credits are derived from taxpayer-furnished information, and are thus confidential . . . [and] it strikes the proper balance between the Tax Code and [the Act] for the comptroller to disclose that audits resulted in a deficiency assessment or refund warrant, but not to disclose the amounts of an assessment or refund.

*Id.* at 680 (citations omitted). You state that the information you have marked “was derived from records of the taxpayer during the examination of the taxpayer’s books, records, papers, officers, or employees, or was in or derived from a record, report, or other instrument required to be furnished under Chapter 171 of the Tax Code.” Upon review, we find that the information you have marked is confidential under sections 111.006(a)(2) and 171.206 of the Tax Code. Accordingly, in releasing the basic information, the comptroller must withhold the information you have marked under section 552.101 of the Government Code in conjunction with sections 111.006(a)(2) and 171.206 of the Tax Code.

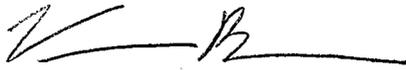
In summary, with the exception of basic information, the comptroller may withhold the information at issue pursuant to section 552.108 of the Government Code. However, in releasing the basic information, the comptroller must withhold the information it has marked pursuant to section 552.101 of the Government Code in conjunction with sections 111.006 and 171.206 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.

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,

A handwritten signature in black ink, appearing to read 'VB', with a horizontal line extending to the right.

Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/jb

Ref: ID#378969

Enc. Submitted documents

c: Requestor  
(w/o enclosures)