



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 28, 2011

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

OR2011-09211

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# 422708 (Comptroller ID# 7144926298).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for "the number of times the confidential records transferred from TWC, ERS[,] and TRS and left on a publicly accessible server were accessed and how many times they were downloaded." You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have also received correspondence from the Office of the Attorney General (the "OAG") objecting to the release of the information. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted arguments and the submitted information.

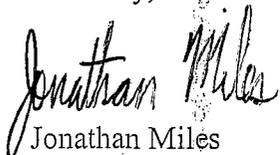
You assert the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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 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). However, you have not explained how the information at issue pertains to the administration of the Tax Code; thus, the comptroller has not established it is a law enforcement entity for purposes of section 552.108 in this context. Nevertheless, section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency possesses information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. The OAG objects to the release of the requested information under section 552.108(a)(1) because the information relates to a pending criminal investigation being conducted by the OAG's Law Enforcement Division and its release would interfere with the pending investigation. Accordingly, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the comptroller may withhold the submitted information under section 552.108(a)(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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 422708

Enc. Submitted documents

c: Requestor  
(w/o enclosures)