



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2011

Mr. David D. Menchaca
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2011-09801

Dear Mr. Menchaca:

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# 423652 (Comptroller ID# 7175524325).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for two specified letter ruling requests and all documents relating to the letter rulings. You state no letter ruling request pertaining to either specified letter ruling exists.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

You claim the information at issue is excepted from disclosure under section 552.116 of the Government Code pursuant to a previous determination issued by this office to the comptroller, Open Records Letter No. 2007-10491 (2007). That ruling serves as a previous determination under section 552.301(a) of the Government Code for 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

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Code. Open Records Letter No. 2007-10491 (2007); *see also* Act of May 29, 2011, 82nd Leg., R.S., H.B. 2947, §§ 1, 2 (to be codified as amendments to Gov't Code § 552.116) (allowing governmental bodies to withhold audit working papers of certain audits). You state the submitted information consists of correspondence and working papers relating to sales tax refund requests. You assert the comptroller maintained this information during the course of sales tax refund request reviews 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 under section 552.116 of the Government Code.³ *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).

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 423652

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments.