



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 11, 2012

Mr. James G. Nolan  
Assistant General Counsel  
Open Records Section  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2012-08949

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# 458932 (Comptroller ID# 7611976442).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for all information related to a specified investigation. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You inform us some of the requested information was at issue in Open Records Letter No. 2011-18071 (2011). In that ruling, we determined, with the exception of basic information, the comptroller may withhold the responsive information under section 552.108(a)(1) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the comptroller may continue to rely on the prior ruling as a previous determination and withhold the identical information in accordance with Open Records Letter No. 2011-18071. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not

excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address your arguments.

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). A governmental body must reasonably explain how and why section 552.108(a)(1) is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is applicable only to records created by an agency, or a portion of an agency, whose primary function is the investigation of crimes and the 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. *See A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-679 (Tex. 1995). You state, and have provided an affidavit confirming, the information at issue is related to an active criminal investigation by the comptroller’s criminal investigations division involving tax compliance. Based on your representations and affidavit, we find the release of the information at issue 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). We therefore conclude section 552.108(a)(1) is applicable in this instance. Accordingly, the comptroller may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

In summary, to the extent the requested information is the same information that was previously ruled upon in Open Records Letter No. 2011-18071, the comptroller may continue to rely upon that ruling and withhold or release the information in accordance with that ruling. To the extent the information was not previously ruled upon, 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,

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<sup>1</sup>As we are able to make this determination, we do not address your other argument against disclosure.

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 "Sean Opperman". The signature is written in black ink and is positioned below the word "Sincerely,".

Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/eb

Ref: ID# 458932

Enc. Submitted documents

c: Requestor  
(w/o enclosures)