



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2012

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

OR2012-10028

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# 457736 (Comptroller ID#: 8203815374).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for information pertaining the comptroller's office's "Know Your Consultant" database, including a ranking of the consultants. You state the comptroller's office does not possess information responsive to a portion of the request.¹ You state the comptroller's office will release some information to the requestor. You state the comptroller's office will withhold audit method codes pursuant to a previous determination issued to the comptroller's office in Open Records Letter No. 2009-14326 (2009).² You claim some of the submitted information is not subject to the Act. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information not held by or on behalf of the governmental body that received the request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Open Records Letter No. 2009-14326 is a previous determination issued to the comptroller's office authorizing the comptroller's office to withhold audit method codes under section 552.108(a)(1) of the Government Code.

considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, we address your contention some of the submitted information is not public information subject to the Act. The Act is applicable only to "public information." See Gov't Code §§ 552.002, .021. Section 552.002(a) provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You assert the employee user identification numbers and the work item identification numbers you have marked in the submitted information are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You state the employee user identification numbers and the work item identification numbers at issue are used by the comptroller's office's internal computer systems to log into and track information within the "Know Your Consultant" database, and thus, only serve as tools for the maintenance, manipulation, or protection of public property. Based on your representations and our review, we agree the information you have marked does not constitute public information for the purposes of section 552.002. Therefore, the employee user identification numbers and the work item identification numbers you have marked are not subject to the Act, and the comptroller's office need not release that information in response to this request.

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

³We assume the "representative sample" of information 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 those submitted to this office.

Code § 552.101. This section encompasses information protected by other statutes, including section 111.006 of the Tax Code. Section 111.006(a)(2) makes confidential “all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer’s books, 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).

The supreme court considered the applicability of section 111.006 to several categories of information in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). In doing so, the court not only considered if the information was derived from the taxpayer’s records, but also whether the information reveals anything about the taxpayer’s business affairs, operations, financial condition, profits, or losses. *Id.* at 676, 680. The court concluded that the starting and ending dates of an audit are not confidential under section 111.006 because although they may indicate the seriousness of an audit, they “reveal[] nothing about a taxpayer’s business affairs, operations, or profits or losses.” *Id.* at 676. Similarly, the court concluded, while the amounts of deficiencies or refunds are derived from the taxpayer’s records, the fact of a deficiency or refund “reveals nothing about taxpayers except that they miscalculated their tax.” *Id.* at 680; *see id.* at 680 n.6. Thus, the fact of a deficiency or refund is not confidential under section 111.006.

You state the refund amount information you have marked was secured, derived, or obtained by the comptroller’s office during the course of an examination conducted pursuant to section 111.004 of the Tax Code. Based on your representations and our review, we conclude the comptroller’s office has established the information at issue is confidential under section 111.006. Accordingly, the comptroller’s office must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 111.006 of the Tax. Code.

In summary, the employee user identification numbers and the work item identification numbers you have marked are not subject to the Act, and the comptroller’s office need not release that information in response to this request. The comptroller’s office must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 111.006 of the Tax. Code. The comptroller’s office must release the remaining information.

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,

A handwritten signature in cursive script that reads "Sean Nottingham".

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 457736

Enc. Submitted documents

c: Requestor
(w/o enclosures)