



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2012

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

OR2012-16203

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# 468895 (Comptroller ID# 8502928528).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for the dollar amounts of specified expired warrants. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 111.006 of the Tax Code. Section 111.006 protects the following types of taxpayer information obtained from an audit of the taxpayer:

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 Texas Supreme Court discussed the applicability of section 111.006 to information requested under the Act in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995), stating:

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:

the 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 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.

You also ask this office to issue a previous determination regarding the type of information at issue in the instant case. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Sean Nottingham
Assistant Attorney General
Open Records Division
SN/bhf

Ref: ID# 468895

Enc. Submitted documents

c: Requestor
(w/o enclosures)