



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller of Public Accounts
LBJ State Office Building
P.O. Box 13528
Austin, Texas 78711-3528

OR94-838

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28458.

The Office of the Comptroller of Public Accounts (the "comptroller") received a request for the audit plan used during an audit conducted on Southwest Manufacturers and Distributors, Inc., covering the period of January 1, 1988 through December 31, 1991. You claim that portions of the requested information are excepted from required public disclosure under section 552.108 of the Government Code. You have marked those portions of the requested information you seek to withhold and have submitted the documents for our review.

Section 552.108 provides as follows:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information that relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987); 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (list of factual information available to the public) (copy enclosed).

You claim that the requested documents relate to an on-going investigation by the comptroller. You further claim that there is a high probability of criminal prosecution in this matter. You have also submitted a letter from Blake Williams, Travis County Assistant District Attorney. Mr. Williams explains the relationship between the Travis County District Attorney's Office and the comptroller. Mr. Williams stresses the importance of the information gathered by the comptroller and the close association the two offices have during investigations and prosecutions of cases dealing with tax fraud. Because you have demonstrated that the requested records concern an on-going investigation that has a high chance of criminal prosecution by the Travis County District Attorney's Office, you may withhold the marked portions of the requested information. See Open Records Decision Nos. 474 (1987); 372 (1982) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident); see also Attorney General Opinion MW-575 (1982) (non-law enforcement agency may claim section 552.108 where there is reasonable probability of criminal prosecution); Open Records Decision No. 493 (1988) (if investigation by licensing board indicates criminal conduct that board intends to report to law enforcement officials, section 552.108 may be invoked). If you have questions about this ruling, please contact our office.

Yours very truly,


Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 28458

Enclosures: Open Records Decision No. 127
Marked documents

cc: Mr. Jeffrey C. Adams
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(w/o enclosures)