



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 18, 1996

Ms. Sandra C. Joseph  
Open Records Counsel/Disclosure Officer  
Office of the Comptroller of Public Accounts  
LBJ State Office Building  
111 East 17th Street  
Austin, Texas 78774

OR96-0340

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38483.

The Office of the Comptroller of Public Accounts (the "comptroller") received a request for:

1. A copy of the 1995 review and evaluation of the Beaumont Audit Office.
2. A copy of the 1995 performance, planning, appraisal, and development report of Myrna Cedars, Beaumont Audit Office.
3. The current salaries of Bobby Fillyaw who works out of the Beaumont Offices and Dalton Lane, Manager of Beaumont Enforcement Office.

You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The

Seventy-fourth Legislature twice amended section 111.006 of the Tax Code. *See* Act of May 12, 1995, 74th Leg., R.S., ch. 175, 1995 Tex. Sess. Law Serv. 1888 (Vernon); Act of May 19, 1995, 74th Leg., R.S., ch. 351, § 4, 1995 Tex. Sess. Law Serv. 2881, 2882 (Vernon). Section 111.006(a)(2) of the Tax Code provides:

(a) Except as provided by Subsection (d), the following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b)<sup>1</sup> of this section:

(2) 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.

*See id.* (footnote added). This provision makes confidential information obtained or derived from taxpayers. *See A & T Consultants v. Sharp*, 904 S.W.2d 668 (Tex. 1995). Additionally, the amount of a tax assessment or refund is confidential under the Tax Code. *Id.* at 680. Accordingly, we conclude that the amount of the assessment contained on page 10, the dollar figure contained on page 8, and the marked language on page 7 are confidential under section 111.006(a)(2) of the Tax Code as applied through section 552.101 of the Government Code. However, we believe that the highlighted language on page 10, which you claim "reveals an issue in the audits" of certain taxpayers is not information "secured, derived, or obtained" from a taxpayer during the course of an examination. Therefore, the comptroller may not withhold that language under section 552.101 of the Government Code.

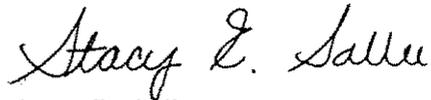
You next claim that section 552.108 excepts from disclosure the reason codes for certain audits. Section 552.108(a) generally applies to records of a law-enforcement agency or prosecutor that deal with the detection, investigation or prosecution of crime. However, in certain circumstances, an agency that is not a law-enforcement agency may claim section 552.108. This office has determined that if an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report or already has reported to the appropriate law-enforcement agency, section 552.108 will apply to the information gathered by the administrative agency if its release would unduly interfere with law enforcement. *See* Open Records Decision No. 493 (1988). In *A & T Consultants v. Sharp*, the court held that the reasons for an audit conducted by the comptroller are confidential under section 552.108 of the Government Code. 904 S.W.2d at 678-79. Therefore, the comptroller may withhold the reason codes on pages 8, 9, and 10 from disclosure under section 552.108.

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<sup>1</sup>Subsections (b) and (d) are not relevant to the disposition of this open records request.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 38483

Enclosures: Marked documents

cc: M. Clark  
4620 Arthur  
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(w/o enclosures)