



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 30, 1998

Ms. Sandra Joseph  
Open Records/Disclosure Office  
Comptroller of Public Accounts  
LBJ State Office Bldg  
111 East 17<sup>th</sup> Street  
Austin, Texas 78774-0100

OR98-2897

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118994.

The Comptroller of Public Accounts (the "comptroller") received the following request for information

1. Copy of the weekly status reports, instructions to auditors for conducting audits, memoranda setting out final agency policy and/or audit policy, and any other written documents written by any person in the Comptroller's Office during the period of November 1, 1997 to present.
2. Copy of the auditor sign-out logs for franchise tax auditors for Dallas West and Houston North for the period of November 1, 1997 to present.

Through a series of requests for clarification from the comptroller to the requestor, from February 27, 1998 through July 14, 1998, the request for information was narrowed to only seek "weekly status reports" from the Audit and Tax Policy Divisions and memoranda concerning tax and audit issues.<sup>1</sup> In response to the request, you submit to this office for review the information which you assert is responsive. In your original request for a ruling, you raised sections 552.101, 552.103, 552.107, 552.108, 552.111 and 552.117 of the

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<sup>1</sup>A governmental body must request a ruling within ten *business* days of receiving a request for information. See Gov't Code § 552.301. However, the ten business day deadline is tolled while a governmental body, acting in good faith, seeks clarification of the request. See Gov't Code § 552.222(b); Open Records Decision No. 333 (1982).

Government Code. However, through subsequent correspondence you have narrowed the applicable exceptions and only claim sections 552.101 and 552.108 for the requested records. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

We first consider your claim that section 552.108 excepts from disclosure certain marked information in the submitted records. 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. The comptroller's office is a law enforcement agency for purposes of administering the Tax Code as specifically addressed in the Texas Supreme Court's ruling in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-679 (Tex. 1995). In *A & T Consultants*, the court held that the reasons for an audit conducted by the comptroller are excepted from disclosure under section 552.108 of the Government Code. *See* 904 S.W.2d at 678-79. You explain that "disclosure of the [requested] information may allow the targets of the investigations to conceal or destroy evidence of non-compliance with the Tax Code." Based on your representation, we agree that the comptroller has shown that section 552.108 is applicable to the marked information. Therefore, the comptroller may withhold this information from disclosure under section 552.108.

Next, we address your assertion that section 552.101 excepts some of the requested information from required public disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that section 552.101 in conjunction with section 111.006 of the Texas Tax Code excepts portions of the submitted comptroller weekly status reports from disclosure.

Section 111.006 of the Tax Code provides, in relevant part, that "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" is confidential. Tax Code § 111.006(a)(2). This provision makes confidential information obtained or derived from taxpayers. *See A & T Consultants*, 904 S.W.2d at 668. Exceptions to confidentiality set forth in subsections (b) and (c) do not appear to apply in this instance.

As for the weekly status reports, you have highlighted the information you seek to withhold under section 111.006(a)(2). You state that "[f]or those entries discussing audits and refund requests, we believe that the issues involved may be confidential by §111.006(a)(2) since the fact that a taxpayer is being audited, or has been, audited is public information." Concerning the audit and refund request information which you have highlighted and marked with an "A" or "R", it appears that the information was "secured, derived, or obtained by the comptroller," therefore, this information must be withheld under section 111.006(a)(2).

You next state that “[f]or those entries discussing administrative hearing information or taxability ruling information we believe that 111.006(a)(2) of the Tax Code requires us to withhold only the information that would identify the taxpayer involved, e.g. the taxpayer’s name and or/or the name of the taxpayer’s representative(s).”<sup>2</sup> You have marked this information with an “H” or “TR.” *See* Open Records Letter No. 96-2203 (1996) (requiring comptroller to deidentify position letters); *cf.* Attorney General Decision H-223 (1974) (requiring comptroller to de-identify administrative hearing decisions under predecessor of Tax Code sections 111.006 and 151.027).

We have previously ruled that documents filed in conjunction with an administrative hearing should be de-identified. *See* Open Records Letter Nos. 97-0295 (1997), 96-1612 (1996) (balancing section 552.025 of Government Code and section 111.006 of Tax Code). However, the information at issue here consists of internal records, which do not appear to be documents filed in an administrative hearing. Since section 111.006(a) provides that “[e]xcept as provided by Subsection (d) . . . all information secured, derived, or obtained by the comptroller” is confidential, we do not believe that de-identification of internal documents is a sufficient method in order to meet the requirements of the applicable Tax Code provision. Therefore, we conclude that de-identification is not the proper way to comply with the requirements of section 111.006 of the Tax Code, concerning the “administrative hearing information or taxability ruling information,” such as the submitted weekly status reports.

Based on a review of the submitted records and applicable statute, we conclude that the information disclosed in the comptroller’s “weekly status reports” should be treated equally, whether or not it is related to “audits and refund requests” or “administrative hearing information or taxability ruling information.” We believe that the applicable Tax Code confidentiality provisions protect information about a taxpayer’s business affairs regardless of whether the comptroller obtained the information by auditing the taxpayer’s business or by requesting information in order to render a private ruling. *See* Open Records Letter No. 96-1612 (1996). Accordingly, we conclude that the comptroller should review the submitted records and withhold all confidential information about taxpayers’ business affairs.<sup>3</sup> Specifically, the comptroller should redact “all information secured, derived, or obtained” from taxpayers from its weekly status report. Additionally, the comptroller should redact the identifying hearing numbers from its weekly status reports.

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<sup>2</sup>You also state that the comptroller will make “make available to the public a de-identified copy of the final decision in each of the mentioned hearings.”

<sup>3</sup>We advise you to exercise caution in releasing the submitted information to the public. *See* Gov’t Code § 552.352 (distribution of confidential information is criminal offense).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/mjc

Ref.: ID# 118994

Enclosures: Submitted documents

cc: Mr. Randy Casey, CPA  
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(w/o enclosures)