



June 18, 1999

Mr Scott Fawcett
Legal Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR99-1686

Dear Mr. Fawcett:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125168.

The Comptroller of Public Accounts (the "comptroller") received an open records request for audits performed on certain named businesses and other entities in the Houston area since January 1, 1994. The requestor also seeks all notices of sales tax liabilities distributed in the Houston area by the comptroller since January 1, 1994. You have submitted to this office a representative sample of the audits and a "screen print" of the types of information contained in the notices. You contend that the portions of these records that you have highlighted are made confidential under section 111.006(a)(2) of the Tax Code and, therefore, must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 111.006(a)(2) of the Tax Code provides that 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).

Although this office has determined that "position letters" and administrative hearing decisions must be released to the public with the identity of the taxpayer redacted, all supporting documents or other information provided to the comptroller by the taxpayer must be withheld from the public pursuant to section 111.006(a)(2) of the Tax Code. *See* Open Records Letter No. 97-0295 (1997). After reviewing the information at issue, we agree that the information you have highlighted is made confidential under section 111.006(a)(2). We therefore, conclude that this information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code.

You also contend that some of the information at issue must be withheld pursuant to section 151.027(a) of the Tax Code. Section 151.027(a) provides confidentiality for information collected under the Limited Sales, Excise, and Use Tax Act and reads as follows:

(a) Information in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection, except for information set forth in a lien filed under this title or a permit issued under this chapter to a seller and except as provided by Subsection (c) of this section.

This provision prevents the disclosure of information and data “obtained” or “derived” from a taxpayer. You have highlighted certain information that consists of the sales and use tax returns required to be submitted by the taxpayer pursuant to section 151.403 of the Tax Code. We, therefore, conclude that the information you have highlighted is confidential pursuant to section 151.027(a) of the Tax Code and must not be released.

The requestor also seeks information about “contracted” informants. *See* Gov’t Code § 403.0195 (“The comptroller may contract with a person for the receipt of information about a possible claim that the state may be entitled to pursue for the recovery of revenue or other property.”). You seek to withhold portions of the comptroller’s contracts with informants pursuant to the informer’s privilege as incorporated into section 552.101.

In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer’s privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

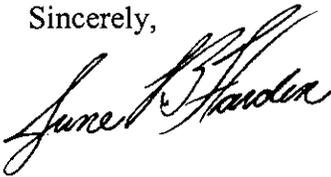
The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. *Roviaro v. United States*, 353 U.S. 53, 59 (1957). When information does not describe conduct that violates the law, the informer’s privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978).

We generally agree that the comptroller may withhold all identifying information regarding contracted informants pursuant to the informer’s privilege. However, because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not

apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). Consequently, to the extent any of the informers' identities have been publically revealed, even by the informants themselves, all information concerning those individuals, including the "informer contracts" with the comptroller, must now be released to the requestor.¹

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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/eaf

Ref.: ID# 125168

Encl. Submitted documents

cc: Mr. Wayne Dolcefino
Reporter
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3310 Bissonet
Houston, Texas 77005
(w/o enclosures)

¹Although you have also raised the "law-enforcement" exception, section 552.108 of the Government Code, to protect portions of the contracts, we believe that the public release of the identity of the informant in a particular instance would undercut any law-enforcement interests in withholding the name of the individual or business entity being informed upon. Accordingly, we need not further consider your section 552.108 claim with regard to the informant contracts.