



April 3, 2002

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

OR2002-1639

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160717.

The Comptroller of Public Accounts (the “comptroller”) received a request for all documents relating to a sales tax audit of Stone-Tec, Inc. (“Stone-Tec”). You state that you will be providing the requestor with the information that you believe is public but claim that the submitted third-party verification information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted to this office by the requestor. *See* Gov’t Code § 552.304 (permitting interested party to submit reasons why requested information should or should not be released).

Section 552.108 excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov’t Code § 552.108(a)(1). The comptroller is a law enforcement agency that “uses audits to further [its] law enforcement objectives” in enforcing tax laws. *A & T Consultants, Inc.*

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<sup>1</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*v. Sharp*, 904 S.W.2d 668, 679 (Tex. 1995). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). When a criminal investigation or prosecution is pending, section 552.108(a)(1) protects information pertaining to the pending case because the release of such information presumptively would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g 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); see also, e.g., Open Records Letter Ruling 2000-4762 at 2 (2000) (granting comptroller previous determination to withhold under 552.108(a)(1) list of pending audits where taxpayer has not yet been notified).

The requestor indicates that Stone-Tec is seeking an audit redetermination. You do not assert that an audit redetermination constitutes a “pending audit.” Furthermore, you have submitted to this office a list containing 5,942 pending or ongoing audits. You do not identify Stone-Tec on this list, and we were unable to locate the company among the entities listed. Instead you make a global argument that releasing third-party verification forms would deter third parties from “provid[ing] needed information in response to *future* audits.” (Emphasis added.) Because you do not specify how releasing the submitted third-party verifications would interfere with a particular ongoing audit or would otherwise interfere with the detection, investigation, or prosecution of crime, we conclude that you may not withhold the submitted information under 552.108.

We turn now to your argument regarding common law privacy. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the common law right to privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 540 S.W.2d at 685. This office has previously determined that “all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.” Open Records Decision No. 373 at 3 (1983). However this office also found that a legitimate public interest can exist in such financial information. *Id.* It must also be noted that common law privacy protects only the rights of individuals, not corporations. See Open Records Decision No. 620 (1993) (corporation has no common law privacy interest in its financial information); see also *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950).

Therefore, to the extent that the submitted information relates to transactions between Stone-Tec and other business entities, it is not protected by common law privacy and may not be withheld section 552.101 of the Government Code. As for the submitted information

that concerns transactions between Stone-Tec and individual persons, we agree that such information arguably satisfies the first prong of the *Industrial Foundation* test. However, we find that the submitted information is of legitimate public interest because it is used, in part, to determine whether the State is properly paid all taxes due. We therefore find that the submitted third-party verification forms are not protected by common law privacy and may not be withheld under section 552.101 of the Government Code.

In summary, the comptroller may not withhold the submitted information under either section 552.108 or 552.101 of the Government Code.

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 example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

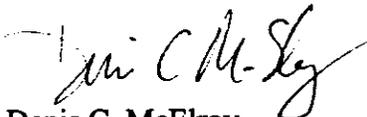
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 160717

Enc. Submitted documents

c: Mr. Ray Bonilla  
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(w/o enclosures)