



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2009

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

OR2009-09440

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 348780 (Comptroller ID#: 5705378172, 5706425389).

The Texas Comptroller of Public Accounts (the "comptroller") received two requests for (1) any records regarding security breaches of personal data maintained by the comptroller or any other state agency and (2) any records pertaining to a specific investigation.¹ You state you will release some of the requested information to the requestors. You also state that you are withholding social security numbers under section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.116, 552.117, 552.130, and 552.136 of the Government Code. Furthermore, you state you have notified the Travis County District Attorney's Office (the "district attorney"), the Texas Lottery Commission (the "commission"), and the Office of the Attorney General (the "OAG") of the request and of their right to submit arguments to this

¹You state the comptroller sought clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

office as to why the requested information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received arguments from the commission. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108 (a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is the investigation of crimes and enforcement of criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 is generally not applicable to records created by an agency whose chief function is essentially regulatory in nature. *See* Open Records Decision No. 199 (1978). The comptroller is a law enforcement agency for purposes of administering the Tax Code. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-679 (Tex. 1995). However, the information at issue does not pertain to the administration of the Tax Code; thus, the comptroller is not a law enforcement entity for purposes of section 552.108 in this context. We note section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency possesses information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. You have provided our office with a representation from the Travis County District Attorney’s Office objecting to the release of the submitted information because its release would interfere with an ongoing criminal investigation. Thus, we conclude the release of the submitted information 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) (court delineates law enforcement interests that are present in active cases). Therefore, the comptroller may withhold the submitted information under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

³We 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.

Reg Hargrove
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(w/o enclosures)