



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2012

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

OR2012-00187

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# 443111 (ORR# 7721652018).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for a specified settlement agreement. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.022(a) of the Government Code provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(18). The submitted information consists of a settlement agreement and, thus, is subject to section 552.022(a)(18) of the Government Code.<sup>1</sup> However, section 552.101 of the Government Code makes information confidential under chapter 552. *See id.* § 552.022(a). Therefore, we will consider your arguments under that section.

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, including section 111.006 of the Tax Code. Section 111.006(a)(2) makes confidential information that is “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[.]” Tax Code § 111.006(a)(2).

The supreme court considered the applicability of section 111.006 to several categories of information in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). In doing so, the court not only considered if the information was derived from the taxpayer’s records, but also whether the information reveals anything about the taxpayer’s business affairs, operations, financial condition, profits, or losses. *Id.* at 676, 680. The court concluded that the starting and ending dates of an audit are not confidential under section 111.006 because although they may indicate the seriousness of an audit, they “reveal[] nothing about a taxpayer’s business affairs, operations, or profits or losses.” *Id.* at 676. Similarly, the court concluded that while the amounts of deficiencies or refunds are derived from the taxpayer’s records, the fact of a deficiency or refund “reveals nothing about taxpayers except that they miscalculated their tax.” *Id.* at 680; *see id.* at 680 n. 6. Thus, the fact of a deficiency or refund is not confidential under section 111.006.

Based on our review of the information at issue and *A&T Consultants*, we conclude some of the submitted information is confidential under section 111.006 because it was obtained or derived from a taxpayer’s records and reveals the taxpayer’s business affairs, operations, financial condition, profits, or losses. Accordingly, the comptroller must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 111.006 of the Tax Code. However, you have failed to demonstrate how the remaining information at issue constitutes information obtained from or derived from a taxpayer’s records and reveals the taxpayer’s business affairs, operations, financial condition, profits, or losses for section 111.006 purposes. Accordingly, the comptroller may not withhold any of the remaining information under section 552.101 of the Government Code on this basis, but instead must release it to the requestor.

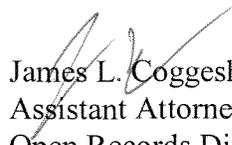
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<sup>1</sup>You inform us the submitted information is not a written determination letter, technical advice memorandum, or administrative hearing ruling within the scope of section 552.025 of the Act. *See* Gov’t Code 552.025 (written determination letter, technical advice memorandum, or ruling concerning a tax matter that is issued by governmental body with taxing authority may not be withheld from release under the Act).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/dls

Ref: ID# 443111

Enc. Submitted documents

c: Requestor  
(w/o enclosures)