



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2014

Mr. David D. Menchaca
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2014-19577

Dear Mr. Menchaca:

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# 541836 (Comptroller ID# 10668191119).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for five categories of information pertaining to the tax report filings submitted by CGGVeritas Services (U.S.) Inc. ("CGG") to the comptroller during specified time periods. You state you have released some information to the requestor. You also state the comptroller is withholding responsive audit working papers and agency work manager comments created by auditors pursuant to the previous determinations issued to the comptroller in Open Records Letter Nos. 2007-10491 (2007) and 2004-3926 (2004), respectively.¹ See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)). You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the

¹Open Records Letter No. 2007-10491 (2007) authorized the comptroller to withhold audit working papers created during the course of an audit conducted under the authority of section 111.004 of the Tax Code under section 552.116 of the Government Code, without requesting a decision from the attorney general. Open Records Letter No. 2004-03926 (2004) authorized the comptroller to withhold comments entered into its internal Agency Work Manager system that are prepared or maintained in conducting audits under section 552.116 of the Government Code, without requesting a decision from the attorney general.

Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.103 of the Government Code provides in pertinent part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* ORD 551 at 4. We note contested cases conducted under the Administration Procedure Act (the "APA"), chapter 2001 of the Government Code, are considered litigation for purposes of section 552.103. *See* Open Records Decision No. 588 at 7 (1991). We further note a contested case before the State Office of Administrative Hearings (the "SOAH") is considered litigation for the purposes of the APA. *See id.*

You inform us, and provide documentation showing, at the time the comptroller received the instant request for information, the comptroller was a party to two pending tax administrative

²Although you also raise Texas Rule of Civil Procedure 192.5, we note the proper exception to raise when asserting the attorney work product privilege for information not subject to section 552.022 of the Government Code is section 552.111 of the Government Code. *See* Open Records Decision Nos. 677 (2002).

³We assume 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 those records contain substantially different types of information than that submitted to this office.

hearings, as well as a pending lawsuit styled *CGGVeritas Services (U.S.) v. Combs*, Cause No. D-1-GN-12-001316, in the 353rd Judicial District Court of Travis County, Texas, involving CGG's franchise tax returns during the specified time periods. You explain the submitted information relates to CGG's tax report filings and refund requests for tax years 2008, 2009, and 2010, and these filings and requests are the subjects of the pending litigation. You claim, therefore, the subject matter of the litigation is related to the submitted information. Based on your representations and our review, we find the comptroller was a party to pending litigation when it received the instant request for information. Further, we find the submitted information relates to the pending litigation. Thus, the comptroller may withhold the submitted information in its entirety under section 552.103 of the Government Code.⁴

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, once information has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 541836

Enc. Submitted documents

c: Requestor
(w/o enclosures)