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ATTORNEY GENERAL OF TEXAS

September 22, 2015

Mr. James G. Nolan
Associate Deputy General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2015-19773

Dear Mr. Nolan:

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# 580334 (Comptroller ID# 11582177123).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for the Texas Alcoholic Beverage Commission License/Permit Procedures Manual and all information relating to J&R Food and Beverage, LLC, from a specified time period. The comptroller's office states it will release some of the requested information. The comptroller's office claims some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the comptroller's office claims and reviewed the submitted information.

Section 552.108 of the Government Code provides, in pertinent part:

- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:
 - (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). 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's office is a law enforcement agency for purposes of administering the Tax Code. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-79 (Tex. 1995).

The comptroller's office informs us the information it has marked consists of information maintained for internal use by the comptroller's office's enforcement division for tax collection purposes. The comptroller's office also informs us release of the information at issue would reveal public tax collection techniques and would interfere with law enforcement by allowing taxpayers to thwart enforcement and collection activities and potentially avoid paying the full amount of tax due. Based on the comptroller's office's representations and our review, we find the comptroller's office has demonstrated release of most of the information it has marked would interfere with law enforcement. However, the comptroller's office has failed to demonstrate how the remaining information it has marked, which we have marked for release, would interfere with law enforcement. Thus, with the exception of the information we have marked for release, the comptroller's office may withhold the information it has marked under section 552.108(b)(1) of the Government Code. As the comptroller's office raises no other exceptions to disclosure, it must release the remaining information.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 580334

Enc. Submitted documents

c: Requestor
(w/o enclosures)