



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 16, 2016

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

OR2016-13749

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# 614521 (Comptroller ID# 12305868535).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for all settlement agreements regarding specified fees over a specified period of time. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

We note the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

¹We 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.

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

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

Gov't Code § 552.022(a)(18). The requested information consists of settlement agreements to which the comptroller's office is a party. As such, these settlement agreements are subject to subsection 552.022(a)(18) and must be released unless they are made confidential under the Act or other law. *See id.* However, section 552.101 of the Government Code makes information confidential under the Act. *See id.* § 552.022(a). Therefore, we will consider your argument 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." *Id.* § 552.101. This section encompasses information that other statutes make confidential, such as section 111.006 of the Tax Code. Section 111.006(a)(2) of the Tax Code provides that information "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" is confidential. 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.

You seek to withhold the marked information. Based on *A & T Consultants*, we find the information you marked was obtained from taxpayers and reveals the taxpayers' business affairs, financial conditions, profits, or losses. Accordingly, the comptroller's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code. The remaining information must be released.

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 614521

Enc. Submitted documents

c: Requestor
(w/o enclosures)