



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2016

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

OR2016-05645

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# 601230 (Comptroller ID# 11984651015).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for information relating to the comptroller's office's procedures for identifying taxpayer bank accounts for purposes of levying such accounts, to include the comptroller's office's complete enforcement and collection manual. The comptroller's office states it will release some of the requested information to the requestor. The comptroller's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.139 of the Government Code. We have considered the exceptions the comptroller's office claims and reviewed the submitted representative sample of information.¹

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:

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.

(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).

You state the information you have marked consists of information maintained for internal use by the comptroller's office's enforcement division for tax collection and enforcement purposes. You explain release of the information at issue would reveal decision points for law enforcement actions and the specific factors taken into consideration in regard to those decision points. Based on the your representations and our review, we find the comptroller's office has demonstrated the release of the information you have marked would interfere with law enforcement. Thus, the comptroller's office may withhold the information you have marked under section 552.108(b)(1) of the Government Code.² The comptroller's office must release the remaining information.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 601230

Enc. Submitted documents

c: Requestor
(w/o enclosures)