



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2019

Ms. Barbara A. Gyure  
Research Specialist  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2019-01750

Dear Ms. Gyure:

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# 747098 (Comptroller ID# 14768048107).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for information pertaining to a specified address. You state the comptroller's office released some of the requested information. You state the comptroller's office is withholding some information pursuant to the previous determination issued to the comptroller's office in Open Records Letter No. 2003-7642 (2003).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted of information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Section 111.006(a)(2) of the Tax Code provides that information "secured, derived, or

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<sup>1</sup>Open Records Letter No. 2003-7642 authorizes the comptroller's office to withhold sales tax returns and franchise tax reports under section 552.101 of the Government Code in conjunction with sections 151.027 and 171.206 of the Tax Code, respectively. See Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, facts, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

obtained by the [Texas Comptroller of Public Accounts (the “comptroller’s office”)] 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 assert the information you marked consists of information “secured, derived, or obtained” by the comptroller’s office during the course of examinations of a taxpayer that was subsequently forwarded to the OAG for collection. Based on our review of the information at issue and *A & T Consultants*, we conclude the information you marked is confidential under section 111.006 of the Tax Code and must be withheld under section 552.101 of the Government Code.

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).

You inform us the information you marked consists of internal records of the comptroller's office's enforcement division for enforcement of state tax laws. You also inform us disclosure of the information at issue would interfere with law enforcement investigative abilities by revealing the comptroller's office's investigation and tax collection methods. Based on your representations and our review, we agree the release of this information would interfere with law enforcement. Thus, the comptroller's office may withhold the information you marked under section 552.108(b)(1) of the Government Code.

In summary, the comptroller's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 111.006 of the Tax Code. The comptroller's office may withhold the information you marked under section 552.108(b)(1) of the Government Code. The comptroller's office must release the remaining information.

Finally, you ask this office to issue a previous determination that would permit the comptroller's office to withhold internal notations made by the comptroller's office's enforcement division for tax collection purposes under section 552.108(b)(1) of the Government Code without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. 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](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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/mo

Ref: ID# 747098

Enc. Submitted documents

c: Requestor  
(w/o enclosures)