



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 6, 2020

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

OR2020-12805

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# 826651 (Comptroller ID#s 13019 and 13020).

The Texas Comptroller of Public Accounts (the "comptroller's office") received two requests from the same requestor for communications between the comptroller's office and representatives of two named companies during a specified time period. You state the comptroller's office will release some information to the requestor. You state you will withhold certain information pursuant to Open Records Letter No. 2007-10491 (2007) and will rely on Open Records Letter No. 2019-23156 (2019) to withhold or release other responsive information.<sup>1</sup> The comptroller's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the comptroller's office claims and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Open Records Letter No. 2007-10491 is a previous determination authorizing the comptroller's office to withhold audit working papers created or maintained during the course of a tax audit conducted under the authority of section 111.004 of the Tax Code from the public on the basis of section 552.116 without the necessity of again requesting an attorney general decision under the Act. Open Records Letter No. 2019-23156 required the comptroller's office to withhold certain information under section 552.101 of the Government Code in conjunction with section 151.464 of the Tax Code and release the remaining information at issue.

<sup>2</sup> We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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. Section 552.101 encompasses information made confidential by other statutes, including chapter 151 of the Tax Code. Section 151.462 provides:

(a) The comptroller[’s office] shall require each brewer, manufacturer, wholesaler, distributor, or package store local distributor to file with the comptroller[’s office] a report each month of alcoholic beverage sales to retailers in this state.

(b) Each brewer, manufacturer, wholesaler, distributor, or package store local distributor shall file a separate report for each permit or license held on or before the 25th day of each month. The report must contain the following information for the preceding calendar month’s sales in relation to each retailer:

(1) the brewer's, manufacturer's, wholesaler's, distributor's, or package store local distributor's name, address, taxpayer number and outlet number assigned by the comptroller, and alphanumeric permit or license number issued by the Texas Alcoholic Beverage Commission;

(2) the retailer's:

(A) name and address, including street name and number, city, and zip code;

(B) taxpayer number assigned by the comptroller; and

(C) alphanumeric permit or license number issued by the Texas Alcoholic Beverage Commission for each separate retail location or outlet to which the brewer, manufacturer, wholesaler, distributor, or package store local distributor sold the alcoholic beverages that are listed on the report; and

(3) the monthly net sales made by the brewer, manufacturer, wholesaler, distributor, or package store local distributor to the retailer for each outlet or location covered by a separate retail permit or license issued by the Texas Alcoholic Beverage Commission, including separate line items for:

(A) the number of units of alcoholic beverages;

(B) the individual container size and pack of each unit;

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- (C) the brand name;
- (D) the type of beverage, such as distilled spirits, wine, or malt beverage;
- (E) the universal product code of the alcoholic beverage; and
- (F) the net selling price of the alcoholic beverage.

Tax Code § 151.462(a), (b). With regards to the reports required to be filed by brewers, manufacturers, wholesalers, distributors, and package store local distributors, section 151.464 provides:

Except as provided by Section 111.006 [of the Tax Code], information contained in a report required to be filed by this subchapter is confidential and not subject to disclosure under [the Act].

*Id.* § 151.464. Section 111.006(h) of the Tax Code, which excepts certain information from the confidentiality of section 151.464, provides the following:

(h) The comptroller[’s office] shall disclose information to a person regarding net sales by quantity, brand, and size that is submitted in a report required under Section 151.462 if:

- (1) the person requesting the information holds a permit or license under Chapter 19, 20, 21, 37, 64, 65, or 66, Alcohol Beverage Code; and
- (2) the request relates only to information regarding the sale of a product distributed by the person making the request.

*Id.* § 111.006(h). You indicate the submitted communications you have marked contain information taken from reports required to be made to the comptroller’s office pursuant to section 151.462(b). *See id.* § 151.462(b). You state the requestor is not authorized to receive the information at issue pursuant to section 111.006(h). Based on these representations and our review of the information at issue, we conclude, pursuant to section 552.101 of the Government Code in conjunction with section 151.464 of the Tax Code, the comptroller must withhold the information you have marked that consists of information specified in section 151.462(b) that is contained in reports required to be made under section 151.462(a).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1),.

301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is applicable only to records created by an agency, or a portion of an agency, whose primary function is the investigation of crimes and the 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, 678-679 (Tex. 1995).

You state the submitted information you have marked relates to an active criminal investigation begun by the comptroller's office that has been referred for prosecution. Based on your representations and our review, we find the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the comptroller's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

To summarize, pursuant to section 552.101 of the Government Code in conjunction with section 151.464 of the Tax Code, the comptroller's office must withhold the information you have marked that consists of information specified in section 151.462(b) of the Tax Code that is contained in reports required to be made under section 151.462(a). The comptroller's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MP/rm

Ref: ID# 826651

Enc. Submitted documents

c: Requestor  
(w/o enclosures)