



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2020

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

OR2020-20110

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# 838769 (Comptroller ID# 16803).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for information pertaining to communications between the comptroller's office and representatives of two named companies during a stated time period. You state the comptroller's office will release some of the requested information. You state the comptroller's office will withhold certain information pursuant to Open Records Letter No. 2007-10491 (2007) and will rely on Open Records Letter Nos. 2020-12805 (2020) and 2019-23156 (2019) to withhold or release other responsive information.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the

¹ Open Records Letter No. 2007-10491 (2007) 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. In Open Records Letter No. 2020-12805 (2020) this office determined the comptroller's office: (1) must withhold certain information under section 552.101 of the Government Code in conjunction with section 151.464 of the Tax Code; (2) may withhold certain information under section 552.108(a)(1) of the Government Code; and (3) must release the remaining information at issue. 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.

Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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, 678-79 (Tex. 1995).

You state the submitted information relates to an active criminal investigation begun by the criminal investigation division of the comptroller’s office. Based on your representations and our review, we find the release of the information at issue 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, section 552.108(a)(1) is applicable to the submitted information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *Open Records Decision No. 127 (1976)* (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which you state the comptroller’s office will release, the comptroller’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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

² We 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.

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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/jxd

Ref: ID# 838769

Enc. Submitted documents

c: Requestor
(w/o enclosures)