

**Comptroller's
Public Information
Summary Disclosure Manual
for
Employees and Contractors**

Notice: We are custodians of public and confidential information. The unauthorized disclosure of confidential information or the unauthorized withholding of public information could lead to fines and/or imprisonment.

See Tex. Gov't Code §§ 552.352, .353

Contents

Part I: Introduction

- Purpose
- Definitions
- The Public Information Act
- Public Information Requests

Part II: Legal Authorities

- Sales Tax
- Franchise Tax
- Audit Information
- Social Security Numbers
- E-mail Addresses of Members of the Public
- Driver's License Numbers and Vehicle Identification Numbers
- Credit Card, Debit Card, Charge Card and Access Device Numbers
- Leads and Informants
- IRS Information
- Destruction or Alteration of Public Records
- Retention of Records

Part III: Penalties for Disclosure of Confidential Information and Unauthorized Withholding of Public Information

- State Information
- Federal Tax Information
- Tax Examiners Participating in the Contract Tax Compliance Examination Program
- Reporting Disclosure Violations

Part IV: Frequently Requested Categories of Information

- Confidential Information
- Public Information

Part V: Federal Tax Information

- Exchange Agreement Between the Comptroller and the IRS
- Confidentiality of IRS Information
- Penalties for Unauthorized Disclosure
- Use of IRS Information

70-179 [Internal Comptroller Employee Agreement—Confidential Information](#)

Click on this link to access and print the form—available only to Comptroller employees.

70-223 [Confidential Treatment of Information Acknowledgment \(CTIA\)](#)

This form is designed for contractors and outside state agency personnel.

Click on this link to access and print the form.

Once you have completed reading this manual, print the appropriate form, sign it, and return it to your supervisor. A copy is attached for your use.

Part I: Introduction

The Texas Comptroller of Public Accounts maintains records vital to the operation of state government. A portion of the information maintained by the agency is public and must be released in a timely manner, according to law. Just as importantly, this agency is obligated to keep certain records confidential by following the procedures outlined in this manual.

Each division has a designated open records specialist who can provide assistance with requests. If you receive an open records request, seek guidance from your supervisor or the division's open records specialist. Requests can and often should be directed to the Open Records Section's legal staff who will review the request, research the applicable statutes and legal authorities, and recommend a response to the request.

Purpose

The purpose of this manual is to provide Comptroller employees and contractors with summary information regarding the Texas Public Information Act, confidentiality issues, and the Comptroller's disclosure policy. This manual will assist the reader in determining what information is public and what information is confidential, and Comptroller procedures regarding this information.

Definitions

Confidential information is information maintained by state agencies, the release of which is prohibited under the provisions of the Texas Public Information Act and other state and federal law.

Sensitive information is information maintained by state agencies that is not necessarily confidential, but must be treated with special precautions or procedures to ensure integrity.

Public information is information that may be released to any member of the public. This information may be the subject of a request or it may be posted on the agency's external Web site.

The Public Information Act

The 1973 Texas Legislature adopted the Open Records Act, now known as the Public Information Act (Act). The Act gives the public the right to request access to information held by governmental bodies and also sets out procedures for responding to these requests.

Information subject to the Act includes that which is collected, assembled or maintained under a law or ordinance, or in connection with the transaction of official business by or for a governmental body if the governmental body owns the information or has access rights to the information. Examples comprise tangible records such as paper documents, photographs, and microfilm/microfiche, as well as electronic information, including e-mails and other types of electronically accessible information.

An important requirement of the Act is that an agency of the state may not, as a rule, independently decide to withhold information from disclosure. Texas Government Code Section 552.301(a) requires the agency to seek decisions from the Texas Attorney General to determine what information is protected from disclosure. Requirements of the Public Information Act are triggered only when a request is put in writing. Written requests may be received by mail, fax, e-mail, or hand-delivery.

The Act's general premise is that all information held by a governmental body is public unless it falls within one of the exceptions listed in the Act. The Public Information Act lists categories of information that are excepted from public disclosure. These exceptions can be found in Chapter 552, Subchapter C.

The Public Information Act, Texas Government Code Chapter 552, can be found online at:

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>

Public Information Requests

Public requests for information are forwarded to open.records@cpa.texas.gov, or to:

Ruth Soucy
Manager and Deputy General Counsel
Open Records
Telephone: (512) 475-0411
Fax: (512) 463-4288
E-mail: ruth.soucy@cpa.texas.gov

If records require submission to the Texas Attorney General under the Act, the records responsive to the request must be provided to the Open Records Section manager for this purpose immediately upon receipt of the request.

Part II: Legal Authorities

Both state and federal laws govern the privacy of certain categories of information held by the agency. These laws define what information is confidential.

For example, the Texas Tax Code identifies which taxpayer information reported to the agency is to remain confidential. Similarly, the Texas Government Code makes certain personal information confidential, such as driver's license numbers, vehicle identification numbers, and Social Security Numbers.

Additionally, in some cases taxpayers and other members of the public may provide this agency with their personal e-mail addresses, credit or debit card numbers, identification numbers or other account information that may be necessary to conduct transactions. Such information may not be disclosed to the public. This type of information is generally confidential under the Texas Government Code.

The following sections list laws that govern various categories of information that employees of the Comptroller's office routinely encounter. The following is by no means an exhaustive list of all types of protected information held by this agency.

Sales Tax

Most sales tax information reported by taxpayers is made confidential by Texas Tax Code Section 151.027.

Franchise Tax

Most franchise tax information reported by taxpayers is made confidential by Texas Tax Code Section 171.206. A notable exception to this is the Public Information Report, which is public. The Ownership Information Report, however, is confidential.

Audit Information

Audit information is generally confidential for all taxes and fees under Texas Tax Code Section 111.006.

Social Security Numbers

Social Security Numbers of living persons are protected from public release by Texas Government Code Section 552.147. Additionally, Social Security Numbers are confidential under federal law in certain circumstances. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I).

E-mail Addresses of Members of the Public

Texas Government Code Section 552.137 provides that an e-mail address of a member of the public, provided for the purpose of communicating electronically with a governmental body, is protected from disclosure unless the person affirmatively consents to its release.

Section 552.137(c) does not protect e-mail addresses for certain individuals or groups. E-mail addresses are public when they are:

- (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
- (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
- (4) provided to a governmental body on a letterhead, coversheet, printed document or other document made available to the public.

Government e-mail addresses, on the other hand, are generally public.

Driver's License Numbers and Vehicle Identification Numbers

Information relating to a vehicle license plate number, driver's license number, vehicle identification number, or title information that is issued by the state of Texas is made confidential under Texas Government Code Section 552.130 in conjunction with Texas Transportation Code Chapter 730.

Credit Card, Debit Card, Charge Card and Access Device Numbers

Texas Government Code Section 552.136 provides that a credit card, debit card, charge card or access device number that is collected, assembled or maintained by or for a governmental body is confidential. This section defines "access device" as a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number or other telecommunications service, equipment or instrument identifier or means of account access that alone or in conjunction with another access device may be used to obtain money, goods, services or another thing of value, or initiate a transfer of funds other than a transfer originated solely by paper instrument.

Leads and Informants

Audit leads, sources of information and identifying information about informants are generally protected from disclosure. Open Records Decision Nos. 172 (1977), 156 (1977), 127 (1976). Any written requests for informant information should be immediately forwarded to the Open Records Section. Note that an informant is not entitled to information deemed confidential.

IRS Information

Federal laws and regulations govern the confidentiality of Internal Revenue Service information that may be made available to the Comptroller. To find out more about confidentiality and disclosure of returns and return information, refer to:

<http://www.irs.gov/pub/irs-pdf/p1075.pdf>

This publication outlines the security guidelines that must be followed when handling federal tax returns or return information. Statutory and regulatory authorities, definitions, penalties and other related information are included.

Questions concerning the confidentiality of IRS information also may be referred to David Menchaca or Bao Phan in the Open Records Section.

Destruction or Alteration of Public Records

A governmental actor's unauthorized, willful destruction or alteration of public records may result in a fine of up to \$4,000 and/or up to three months in jail. *See* Tex. Gov't Code § 552.351; *see also* Tex. Pen. Code § 37.10.

Retention of Records

The Comptroller will retain original records for the applicable time period. Questions regarding records retention should be directed to the agency's Records Management Section.

Part III: Penalties for Disclosure of Confidential Information and Unauthorized Withholding of Public Information

State Information

A governmental actor's unauthorized release of state confidential information or the failure to release public information is a misdemeanor punishable by up to six months imprisonment and/or a fine of up to \$1,000. Tex. Gov't Code §§ 552.352, .353.

The unauthorized release of certain confidential franchise tax information is a misdemeanor. The punishment may be a maximum of one-year imprisonment and/or a fine of up to \$1,000. Tex. Tax Code § 171.361.

Federal Tax Information

A governmental actor's unauthorized disclosure of federal tax information is a felony offense punishable by a \$5,000 fine plus court costs, five years imprisonment or both, plus civil damages. 26 U.S.C § 7213.

Tax Examiners Participating in the Contract Tax Compliance Examination Program

Tax examiners associated with this program are subject to both the requirements and penalties that apply to an employee of the Comptroller regarding the confidentiality and disclosure of information obtained from an audit. All written requests for information from the public must immediately be referred to:

open.records@cpa.texas.gov

or to:

Ruth Soucy
Manager and Deputy General Counsel
Open Records Section
Telephone: (512) 475-0411
Fax: (512) 463-4288

Reporting Disclosure Violations

Possible disclosure violations must be reported to the employee's division director/manager as well as the manager of the Open Records Section.

Part IV: Frequently Requested Categories of Information

Confidential Information

The following contains generally applicable information that may not apply to every situation. Contact your division open records specialist if you need clarification. Legal citations refer to Texas statutes, United States Code, Texas Attorney General opinions (AGOs), open records decisions (ORDs), and open records letter rulings (ORLs).

Audit Information: Audit information is generally confidential for all taxes and fees (Tax Code § 111.006) and unclaimed property (Prop. Code § 74.702). The following audit information is confidential:

- amount of tax deficiency or refund for a particular taxpayer as determined in an audit;
- the reason for an audit, adjustments, etc.;
- financial affairs, business practices, operations, profits, losses, expenditures, etc., obtained during an audit; and
- identity of a taxpayer that has been selected for audit but not yet notified (Gov't Code § 552.108).

Additionally, tax audit information is protected from disclosure under Texas Government Code Section 552.116 (audit working papers). ORL 2007-10491.

Cigarette Tax and Cigar and Tobacco Products Tax: Certain cigarette and tobacco tax information is made confidential by the statutes listed below:

- Cigarette Tax Recovery Trust Fund—all information provided by a participating taxpayer required under Section 154.051(f) of the Tax Code, (Tax Code § 154.051(m));
- distributor non-compliance plan (Tax Code § 154.042(d)); and
- permits—all **financial information** provided with an application for a permit (Tax Code §§ 154.101(g), 155.041(g)).

Coin-Operated Machines Tax: Information derived from books, records, reports and applications that must be made available to the Comptroller is confidential (Occ. Code § 2153.102).

Confidential Information That May Not Be Released to Any Party:

- audit generation list—a list of taxpayers selected for audit, but who have not yet been notified (Gov't Code § 552.108); and
- federal tax information obtained from the Internal Revenue Service, including Employer Identification Numbers (EINs) and Social Security Numbers (SSNs) (26 U.S.C. §§ 6103, 7213) (EINs obtained from the taxpayer are public).

Credit Card, Debit Card, Charge Card and Access Device Numbers: Credit card, debit card, charge card and access device numbers are confidential (Gov't Code § 552.136). The Office of the Attorney General has broadly interpreted the meaning of “account numbers” protected by Section 552.136; therefore, please contact the Open Records Section if you have questions regarding whether a particular type of information is an “account number” for these purposes. An insurance policy number is an “account number” and may not be released. Please note that taxpayer numbers are public.

E-mail Addresses of Members of the Public: E-mail addresses of members of the public are confidential unless on letterhead or submitted in conjunction with a proposal or bid (Gov't Code § 552.137).

Franchise Tax: Franchise tax information is made confidential by Section 171.206 of the Tax Code. The following are some examples:

- amount of tax, penalty or interest reported, due or paid (AGO H-661);
- federal tax returns required to be submitted by the taxpayer (Tax Code § 111.006);
- franchise tax reports (not the Public Information Report) (ORL 2003-7642); and
- franchise tax special reporting method (ORD 300).

Mixed Beverage Gross Receipts Tax: The complimentary drinks and cover charge information reported on mixed beverage tax returns are confidential; all other reported Mixed Beverage **Gross Receipts Tax** data is public.

Mixed Beverage Sales Tax: The mixed beverage **sales tax** imposed by Tax Code Chapter 183, Subchapter B-1, is made confidential by Tax Code Sections 183.043(a) and 151.027(a).

Personnel Information: Home address, home telephone number and whether the employee has family members, are confidential if an employee elects to withhold this information (*see* Gov't Code §§ 552.024, 552.117). Social Security Numbers may be withheld regardless of an employee's election under Section 552.024 (*see* Gov't Code § 552.147).

Property Value Study: Rendition statements, real and personal property reports, and any other information obtained from a property owner by an appraisal district or the Comptroller under a promise of confidentiality are confidential (Tax Code § 22.27; Gov't Code § 403.304).

Refunds, Redeterminations and Hearings: Information obtained from a taxpayer during a request for a refund or during the redetermination/hearings process is made confidential by Section 111.006 of the Tax Code, *e.g.*, Statement of Grounds. However, the fact that a refund or redetermination request was made is public (AGO H-661, H-223).

Sale/Purchase of a Business: All questions about successor liability should be referred to the Advanced Processes Section, Revenue Accounting Division. Requests for Certificates of No Tax Due should be referred to Audit Headquarters.

Sales Tax: Sales tax information is made confidential by Section 151.027 of the Tax Code. The following are some examples:

- amount of bond or security, if required;
- amount of tax, penalty or interest reported, due or paid (AGO H-661);
- amount of tax allocated to each taxing jurisdiction, except as provided by Section 321.3022 of the Tax Code (certain municipalities);
- amount of tax deficiency or refund as determined in an audit (Tax Code § 111.006);
- direct pay permit—information submitted to obtain direct pay permit (identity is public);
- federal tax information provided with state tax return (Tax Code § 111.006);

- financial affairs, operations, profits, losses, expenditures, etc., obtained during an audit (Tax Code § 111.006); *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995);
- returns and payments; and
- sales tax applications.

Telecommunications Infrastructure Fund Assessment: All information provided to the Comptroller by a telecommunications utility or commercial mobile service provider is confidential (Util. Code § 57.048).

Texas Tomorrow Funds: All information relating to the participation of specific purchasers and beneficiaries including name, address, phone number, plan type, amount paid, etc., is confidential (Educ. Code § 54.643).

Unclaimed Property: Certain unclaimed property information is made confidential by the following statutes:

- Property type, property description, dates of last contact/periodic payment for properties reported **less than** two years ago (Prop. Code § 74.104);
- Social Security Number of owner (Prop. Code § 74.104; Gov't Code § 552.147); and
- All information obtained from a holder of unclaimed property during an audit (Prop. Code § 74.702).

Uniform Statewide Accounting/Payroll Information: Extreme caution is urged when disclosing information from these systems to a person other than the originating state agency. These sensitive systems include the Uniform Statewide Accounting System (USAS), Uniform Statewide Payroll System (USPS), and Human Resource Information System (HRIS).

Warrant Numbers: Warrant numbers of outstanding warrants issued by the Comptroller are confidential (Gov't Code § 404.058).

Public Information

All information assembled or maintained by the Comptroller of Public Accounts is presumed public under the Texas Public Information Act. This list cites the most frequently requested taxpayer information and contains generally applicable information, which may not apply to every situation. Contact your division open records specialist if you need clarification regarding the following:

- audit office that performed an audit;
- audit period for in-progress and completed audits;
- audit results (deficiency, credit, no adjustment)—**amount is confidential**;
- bankruptcy information;
- cigarette tax permit applications—**certain financial information is confidential**;
- collection actions, fact of (liens, certifications, judgments);
- date corporation chartered;
- date right to do business forfeited;
- direct pay permit—identity of taxpayer who holds one;
- jurisdiction(s) to which a taxpayer is reporting;
- liens—amount secured by lien, date of filing, taxpayer identity, etc., if lien actually filed;
- officer/director names, addresses, as shown on Public Information Report (PIR)—**Social Security Number (SSN) must be withheld**;
- outlet location, including whether outlet is located inside/outside city limits;
- owned/owning information as shown on corporate PIR;
- permit(s) issued, type and date issued;
- redetermination, whether taxpayer has requested redetermination—**amounts and issues are confidential**;
- refund, fact of—**amount is generally confidential**;
- registered agent (name, address);
- responsibility begin and end date;
- Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) codes;
- status of account (active, inactive, current, privileges/chapter forfeited);
- taxpayer address (master and outlet);
- taxpayer name;
- taxpayer number assigned by the Comptroller—**taxpayer number containing SSN must be withheld**;
- taxpayer telephone number;
- tax rates of taxing jurisdictions;
- tax return, whether filed timely or late (account specific)—**due dates are confidential for sales tax**;
- trust deposit, whether or not there is a trust deposit—**amount is confidential for sales tax**; and
- type of ownership—sole proprietor, partnership, corporation, LP, LLP, LLC.

In general, all applications, reported data, payments and collection actions for the following taxes and fees are public information:

- Automotive Oil Sales Fee;
- Battery Sales Fee;

- Boat and Boat Motor Sales and Use Tax;
- Cement Production Tax;
- Cigarette Tax and Cigar and Tobacco Products Tax—**except for certain financial information on permit application;**
- Coastal Protection Fee;
- Hotel Occupancy Tax;
- insurance taxes;
- Loan Administration Fee;
- Manufactured Housing Sales and Use Tax;
- Miscellaneous Gross Receipts Tax;
- Mixed Beverage Gross Receipts Tax—**except for dollar amount of complimentary drinks; also, Mixed Beverage Sales Tax information is confidential;**
- motor fuels taxes (gasoline, diesel, liquefied petroleum gas);
- Motor Vehicle Sales and Use Tax;
- oil and gas production taxes;
- Oil Well Service Tax;
- Petroleum Products Delivery Fee;
- Public Utility Gross Receipts Tax;
- Sulphur Production Tax; and
- Waste Tire Recycling Fee.

The following unclaimed property information is public:

- holder information—name, address, taxpayer number, value of property reported, etc.;
- owner information—name, last known address, dollar amount credited to each owner; and
- all information about properties reported **more than** two years ago—property type, property description, dates of last contact/periodic payment for reports.

Note: Social Security Numbers, driver’s license numbers, vehicle identification numbers, and insurance policy numbers must be withheld.

Part V: Federal Tax Information

Questions concerning the confidentiality of Internal Revenue Service (IRS) information also can be referred to:

**Open Records Section
Comptroller of Public Accounts
Telephone: (512) 936-6057**

Exchange Agreement Between the Comptroller and the IRS

The Comptroller of Public Accounts and the IRS have entered into an exchange agreement that allows the two agencies to exchange information gathered in the conduct of their activities when needed for tax administration.

Implementing Agreement

The Agreement on Coordinators of Tax Administration, commonly called the “exchange agreement,” provides the basis for coordination and exchange of federal and state tax information. The agreement is supplemented by an implementing agreement. The implementing agreement prescribes the nature, quantity and mechanics for the continuous exchange of tax information, including criteria and tolerance for selection of tax returns and return information, as well as other cooperative activities.

Documents that may be Requested

Through the exchange agreement, designated Comptroller employees may request copies of various types of federal documents including but not limited to the following:

- Form 1120, Federal Income Tax Return for Corporations;
- Schedule C of Form 1040, Federal Income Tax Return for Individuals;
- Form 720, Federal Excise Tax Return;
- Form 706, Estate Tax Return;
- Form 709, Gift Tax Return;
- audit results and work papers for any of the above;
- Form 4789, Currency Transaction Report (for cash transactions in excess of \$10,000); and
- Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business.

Authorized Disclosure Officers

Only the agency disclosure officer and designated assistant disclosure officers are authorized to make contact with or receive contact with the IRS regarding the exchange of information. The IRS will send the requested information only to the disclosure officer or assistant disclosure officer who made the request for the information. For questions or to request IRS information, you may contact:

**Paul Cockreham
Agency Disclosure Officer
General Counsel Division
Comptroller of Public Accounts
Telephone 512/463-4754**

Confidentiality of IRS Information

Federal Tax Information is Confidential

Federal tax information obtained through the IRS exchange agreement is confidential and may not be released to any other state agency, political subdivision, tax official or any other state.

Agencies receiving federal tax information are required under Section 6103(p)(4) of the Internal Revenue Code to provide adequate safeguards to protect the confidentiality of tax returns and information to the satisfaction of the Secretary of the Treasury.

Approved Disclosure

Federal tax information may be disclosed in a Comptroller's administrative hearing, to the Texas Attorney General's Office Taxation Division or to another political subdivision after the assistant agency disclosure officer has approved release of the information, notified the IRS in writing (30 days notice), and received IRS authorization for release.

Computerized Media

Computerized media containing federal tax information must be afforded the same levels of protection given to paper documents or other media that contains federal tax information. Specifically, magnetic media files must be kept in a secured area under the immediate protection and control of the agency. All media processing must be performed in a manner that will protect the confidentiality of the information on the magnetic media.

Notes and Summaries

Notes and summaries made from the examination of federal documents are as confidential as the documents from which the information was derived. It is the information itself that is confidential, not just the document.

Penalties for Unauthorized Disclosure

Internal Revenue Code

Internal Revenue Code Sections 7213 and 7431 describe the penalties for unauthorized disclosure of federal information.

Under Section 7213 of the Internal Revenue Code, a governmental actor's unauthorized disclosure is a felony that may be punishable by a \$5,000 fine, five years imprisonment or both. Under Section 7213A of the Internal Revenue Code, the unauthorized inspection of federal tax information is punishable by a \$1,000 fine, one year imprisonment or both. Section 7431 of the Internal Revenue Code permits a taxpayer to bring suit for civil damages in a U.S. District Court, including punitive damages in cases of willful disclosure or gross negligence, as well as the cost of the action.

State Employees

State employees who make unauthorized disclosures of federal tax information are subject to the same penalties as federal employees. The obligation to maintain confidentiality does not cease when employment terminates.

Use of IRS Information

State Tax Administration

Federal tax information disclosed through the exchange agreement may be used by the receiving agency solely for the purpose of state tax administration.

Separation From Other Information to the Maximum Extent Possible

The Comptroller's office should not maintain federal tax information as part of the administrative file of the state tax return or an audit. The federal documents and any notes and summaries made from the federal documents must be maintained in a red file folder that is separate from the rest of the file. To avoid the inadvertent disclosure of federal information, the file folders should be clearly labeled CONFIDENTIAL to indicate that federal tax information is included.

Determination of Tax Liability

If federal tax information must be used in order to make a determination of tax liability, the IRS must be notified in advance. For example, if federal information will be used to estimate an audit liability, the assistant agency disclosure officer must be advised so that proper notification to the IRS can be made in advance.

Only for Agency Use

Federal tax information obtained by the agency may not be shared with any other state agency, any political subdivision or any other state without proper authorization from the IRS.