



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1996

Mr. Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13841
Austin, Texas 78711-3941

OR96-1028

Dear Mr. Manley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40045.

The Texas Department of Housing and Community Affairs (the "department") received a request for eight categories of information, including copies of "all IRS Forms 8609 that have been issued by the [department] . . . pertaining to the [d]epartment's Low Income Housing Tax Credit Program . . . for the years 1993, 1994, and 1995."¹ You claim that the requested tax forms are excepted from disclosure under sections 552.101 of the Government Code. You have submitted one Form 8609 to this office for review as a sample of the information requested.²

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that federal law makes the requested tax forms confidential. Section 6103 of the federal tax code provides:

¹As the department is not seeking a ruling from this office as to the other categories of requested information, we assume that the department either has released or will release the other categories of requested information.

²In reaching our conclusion here, 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.

(a) General Rule.--Returns and return information shall be confidential, and except as authorized by this title--

...

(2) no officer or employee of any State, any local child support enforcement agency, or any local agency administering a program listed in subsection (1)(7)(D) who has or had access to returns or return information under this section

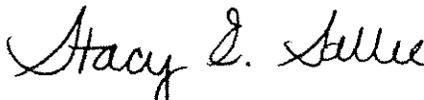
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shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.

26 U.S.C. § 6103. We understand that the department has asked the Internal Revenue Service (the "IRS") for an opinion as to whether the requested information is confidential under federal law. We therefore conclude that the department may withhold the requested information until such time as the IRS issues its opinion. If the IRS determines that federal law makes the requested information confidential, the department must withhold the requested information. If the IRS determines that federal law does not make the requested information confidential, as the department has not claimed any other exception to disclosure, the department must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref: ID# 40045

Enclosure: Submitted document

cc: Ms. Diane Glass
4623 Trail West Drive
Austin, Texas 78735
(w/o enclosure)