



October 12, 1999

Ms. Kathleen F. Watel
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR99-2900

Dear Ms. Watel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128136.

The City of San Antonio (the “city”) received a request for copies of the winning and third runner-up proposals submitted to the city for “EAP services.” You assert that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You have supplied documents from Minter and Associates and Employee Assistance Programs, Inc., which you contend is a representative sample of the responsive information.¹ As you have not submitted argument in support of your assertion under 552.104, no information may be withheld under this provision.

Pursuant to section 552.305 of the Government Code, this office informed the parties whose interests are implicated of the request and provided them the opportunity to claim the exceptions to disclosure either may contend applies to the requested information, together with argument in support of those exceptions. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Government Code section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions in certain circumstances). The notification stated that if the respective company did not respond within 14 days of receipt of the notice, this office will assume that the company has no privacy or property interest in the requested information. Employee Assistance Programs, Inc. did not respond. Mr. Jack Minter of Minter and Associates responded, requesting only that schedule C of his personal income tax return be withheld.

¹We 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 552.110 of the Government Code protects the property interests of those supplying information to governmental entities by excepting two types of information from disclosure: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Gov't Code §552.110. This office will accept a claim that information is excepted from disclosure under the trade secret aspect of section 552.110 if sufficient facts are alleged to establish a *prima facie* case that the information is a trade secret, and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 at 5 (1990). In this case, only conclusory statements have been urged in support of this exception. Neither the city nor either of the third parties has alleged any facts which would establish the "trade secret" aspect of section 552.110.

Information may be withheld under the commercial or financial information aspect of section 552.110 only when that information is made confidential by statute or judicial decision. *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App. - Austin 1999, pet. filed). Title 26 section 6103(a) of the United States Code renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp 748 (.M.D.N.C. 1989). Our offices have held that data collected by the Internal Revenue Service regarding a taxpayer's liability must be withheld. Open Records Decision No. 600 at 9 (1992). Confidential information cannot be released. See Gov't Code §552.352. Confidential information is excepted from disclosure under section 552.101. Therefore, Mr. Minter's Income Tax information must be withheld. As neither the city nor a third party has asserted any statute or judicial decision that makes any other responsive information confidential, and we are aware of none, no information may be withheld as protected commercial or financial information under section 552.110.

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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 128136

Encl. Submitted documents

cc: Mr. Rick Dielman
WAP
2525 Wallinford Drive, Building 5
Austin, Texas 78746
(w/o enclosures)