



March 12, 2001

Ms. Karen H. Brophy
Bickerstaff, Health, Smiley, Pollan, Kever & McDaniel, L.L.P.
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR2001-0950

Dear Ms. Brophy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144897.

The Princeton Housing Authority (the "authority"), which you represent, received a request for all of the authority's bank statements for a four-month period, including all accounts at a specified bank. You claim that the requested records contain information that is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.¹

Initially, we address your representation that the authority has been unsuccessful in attempting to obtain the requested banking records from its former accountant. The Public Information Act does not require a governmental body to create new information in responding to a request for information, but does require a governmental body to make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Further, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request for it. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). In this

¹You inform us that the submitted information is "provided as an example of the format we expect the requested records to reflect." This letter ruling therefore assumes that the submitted information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the authority to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

instance, you inform this office that the authority knows that responsive records exist, but does not have possession of those records. You assure us that the “[a]uthority will diligently pursue return of its records.” Therefore, this ruling presumes that the authority will succeed in retrieving the requested banking records and will promptly make those records available to the requestor. *See* Gov’t Code § 552.221.

The authority asserts that the requested records contain information that must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and thus encompasses information that is confidential under other statutes. Section 6103(a) of the Internal Revenue Code provides for the confidentiality of federal tax returns and return information. Section 6103(b) defines the term “return information” as including “a taxpayer’s identity.” *See* 26 U.S.C. § 6103(b)(2)(A). Section 6103(b) defines the term “taxpayer identity” as including a taxpayer identifying number. *See id.* § 6103(b)(6); *see also id.* § 6109. Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.D.C. 1984). The authority seeks to withhold its taxpayer identifying number, as contained in the requested banking records and provided to the bank in accordance with section 6109 of the Internal Revenue Code. Based on your representations and our review of the submitted information, we conclude that the authority’s taxpayer identifying number is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. *See also* Open Records Decision Nos. 600 at 8-9 (1992), 226 (1979).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

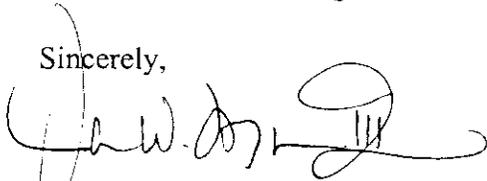
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', written in a cursive style.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144897

Encl: Submitted document

cc: Ms. Michaelle Ray
P.O. Box 607
Princeton, Texas 75407
(w/o enclosures)