



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2004

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P. O. Box 9960
College Station, Texas 77842

OR2004-10675

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215234.

The City of College Station (the "city") received a request for certain "subcontractor utilization reports." You claim that portions of the requested information are excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample document.¹

You claim that tax identification numbers contained within the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.² We note that prior decisions of this office have held that section 6103(a) renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); *see also* Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). We further note that tax return information is defined as data furnished to or collected by the Internal

¹ We assume that the representative sample document 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.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). After carefully considering your arguments and reviewing the submitted information, we find that any tax identification numbers contained within this information do not fall under the definition of tax return information. *See id.* Accordingly, we conclude that the city may not withhold any such numbers under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

However, we note that the submitted information appears to contain social security numbers that may be excepted from disclosure pursuant to section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). We note that these amendments make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that any such social security numbers are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the city should ensure that they were not obtained and are not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, social security numbers contained within the submitted information may be confidential under federal law. The city must release the remaining submitted information to the requestor.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 215234

Enc. Submitted document

c: Mr. Doug Symank
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(w/o enclosures)