



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2006

Ms. Jennifer McClure
Assistant District Attorney
Dallas County District Attorney's Office
Civil Division
Administration Building
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2006-02720

Dear Ms. McClure:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 244490.

Dallas County (the "county") received a request for the county's employer identification number ("EIN") and any documents that contain the EIN of the 256th District Court (the "court"). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.147 of the Government Code. We note that you have only submitted documents with the county's EIN. To the extent the county maintained documents when it received the request for information that contain an EIN for the court, we assume such information has been released.¹ If not, any such information must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to

¹We note, however, that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

requested information, it must release information as soon as possible). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we address your comment that “[i]t is unclear whether the requestor wants one document showing the EIN or all the documents containing the EIN.”³ A governmental body is required to make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). The submitted information consists of documents that contain the county’s EIN. Based on our review, we find that the county has made a good-faith effort to relate the request for information to information that it maintains. Accordingly, we will consider your arguments against disclosure of this information.

Next, we note that the county failed to comply with the time period prescribed by section 552.301(b) of the Government Code in seeking an open records decision from this office. *See* Gov’t Code § 552.301(a), (b). Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.101, 552.117, 552.1175, and 552.147 of the Government Code can provide compelling reasons to withhold information, we will consider the county’s claims under these sections.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes. The submitted information contains W-2 and 1099 forms. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records

²We 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 (1983), 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.

³We note that the Act permits a governmental body to ask a requestor to clarify or narrow the request for information. *See* Gov’t Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 at 5 (1999) (providing that time periods proscribed by section 552.301 are tolled during the clarification process).

Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the Internal 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). The submitted W-2 and 1099 forms constitute tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.⁴

The remaining submitted information consists of a fiscal compliance review report, grant coversheet form, a W-9 form, a road and bridge expenditures report, civil fees report, and an invoice, each of which contains the county's EIN. You claim that the EIN is excepted from disclosure under section 552.101 as confidential wage information under section 603.7 of title 20 of the Code of Federal Regulations. In Open Records Decision No. 599 (1992), this office determined that federal regulations prohibit the disclosure of "wage information" in the files of a state unemployment compensation agency, except for disclosure to an authorized requesting agency under certain circumstances. "Wage information" means "information about wages as defined in the State's unemployment compensation law and includes the . . . Federal employer identification number of an employer reporting wages under a State unemployment compensation law[.]" 20 C.F.R. § 603.2(b); *see also* ORD 599 at 6.

You argue that the EIN at issue "constitutes a 'state employer identification number' within the definition of 'wage information.'" However, the confidentiality provision of section 603.7 applies to "state unemployment compensation agencies" and "requesting agencies." *See* 20 C.F.R. §§ 603.7, 603.2. You do not demonstrate how this provision is applicable to the county. As such, we find that the EIN at issue is not made confidential by section 603.7 of title 20 of the Code of Federal Regulations, and it may therefore not be withheld under section 552.101 on that basis.

To conclude, the county must withhold the W-2 and 1099 forms under section 552.101 of the Government Code in conjunction with federal law. The remaining submitted information, including county's EIN, must be released 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

⁴As we reach this conclusion, we need not address your claims under sections 552.117, 552.1175, or 552.147 of the Government Code.

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 ten 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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 Office of the Attorney General 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 244490

Enc. Submitted documents

c: Mr. Stephen James Larrew
819 West Arapaho Road #24B-222
Richardson, Texas 75080
(w/o enclosures)