



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2006

Mr. James G. Nolan
Open Records Attorney
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2006-12782

Dear Mr. Nolan:

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# 263344.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for the names of individuals and entities for which the comptroller has requested tax information from the Internal Revenue Service (the "IRS") since January 2006. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also inform us that the comptroller notified the IRS of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You contend that the submitted information is confidential under section 6103 of title 26 of the United States Code.² Section 6103 provides in part:

¹ See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released). As of the date of this decision, this office has received no correspondence from the IRS.

² We note that a federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. See Open Records Decision No. 476 (1987) (addressing statutory predecessor).

(a) General rule. – Returns and return information shall be confidential, and except as authorized by [title 26 of the United States Code] –

...

(2) no officer or employee of any State . . . who has or had access to returns or return information under this section,

...

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

(b) Definitions. – For purposes of this section –

(1) Return. – The term “return” means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information. – The term “return information” means –

(A) a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof), of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(a)-(b). You state that the Comptroller requests information from the IRS, including specific filings regarding specified taxpayers, pursuant to a Memorandum of Implementation For the Agreement on Coordination of Tax Administration between the Comptroller and the [IRS] (the “MOU”). You have provided a copy of the MOU.

You state that the submitted information was compiled from requests made to the IRS by the comptroller through the IRS's Austin Disclosure Officer. You contend that the submitted information identifies taxpayers and therefore constitutes return information for the purposes of section 6103(b). You also state that the comptroller has been advised by the IRS that the submitted information constitutes return information, as defined by section 6103(b), that the IRS considers to be confidential under section 6103(a). Thus, it is our understanding that the information at issue constitutes information that has been "received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return" or for some other purpose encompassed by section 6103. *Id.* § 6103(b). We note that federal courts have construed the term "return information" expansively to include any information gathered by the IRS 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). Therefore, based on your representations, we conclude that the submitted information is confidential under section 6103 of title 26 of the United States Code and must be withheld from disclosure under section 552.101 of the Government Code.

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).

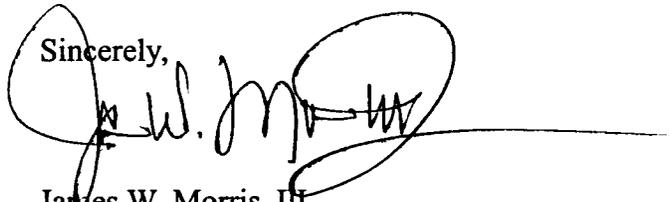
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 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 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 263344

Enc: Submitted documents

c: Mr. Jason Nelson
P.O. Box 1782
Austin, Texas 78767
(w/o enclosures)

Ms. Valerie Barta
IRS Disclosure Officer
Mail Stop 7000 AUSC
P.O. Box 2986
Austin, Texas 78768
(w/o enclosures)