



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2010

Ms. Neera Chatterjee
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-05989

Dear Ms. Chatterjee:

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# 376466 (OGC# 128428).

The University of Texas System (the "system") received a request for information pertaining to certain Internal Revenue Service (the "IRS") questionnaires completed for any institution in the system. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. Section 552.101 encompasses information protected by other statutes, including section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns);

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.

Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as

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 [of the IRS] 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[.]

See 26 U.S.C. § 6103(b)(2)(A). 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), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). You state a portion of the submitted information consists of the system's IRS filings, Form 14018, Compliance Questionnaire Colleges and Universities. You indicate the Form 14018s consist of "data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the IRS] with respect to a return."² Upon review, we agree the Form 14018s consist of data furnished to the IRS with respect to a return. Accordingly, we conclude the Form 14018s constitute "return information" for purposes of section 6103 of title 26 of the United States Code.

As noted above, "return information" is generally confidential. *See* 26 U.S.C. § 6103(a). However, we also note a taxpayer may release his or her own tax information. *See* IRS Fact Sheet #FS-97-12 (stating taxpayers may make their own tax information public).³ Accordingly, we find the submitted Form 14018s are generally confidential under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. However, the system has the discretion to disclose the submitted Form 14018s.⁴

²You note section 6104(d)(1)(A)(ii) of title 26 of the United States Code makes 990-T forms of organizations described in section 501(c)(3) of title 26 of the United States Code available for public inspection for a three-year period. *See* 26 U.S.C. § 6104(d)(1)(A)(ii). You inform us, however, section 501(c)(3) is not applicable to the system, so that the public inspection requirement under section 6104(d)(1)(A)(ii) does not apply to the system. *See id.* § 501(c)(3).

³A copy of this document may be found on the IRS's website: <http://www.irs.gov/pub/irs-news/fs-97-12.pdf>.

⁴As our ruling is dispositive, we need not address your remaining arguments for this information.

You raise section 552.107 of the Government Code for the remaining information. Section 552.107(1) protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You claim the remaining information consists of communications between system employees and system attorneys that were made for the purpose of facilitating the rendition of professional legal services to the system. You further state the communications were intended to be confidential, and that the confidentiality of the communications has been maintained. Upon review, we find the system may withhold the information you have marked pursuant to section 552.107 of the Government Code.

In summary, the submitted Form 14018s are generally confidential under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; however, the system has the discretion to disclose the Form 14018s. The system may withhold the information you have marked pursuant to section 552.107 of the Government Code.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 376466

Enc. Submitted documents

cc: Requestor
(w/o enclosures)
