ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2010

Ms. Ann Manning
Underwood Law Firm
For Lubbock Independent School District
P.O. Box 16197
Lubbock, Texas 79490

OR2010-08072

Dear Ms. Manning:

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# 381736.

The Lubbock Independent School District (the "district"), which you represent, received a request for communications from the Internal Revenue Service (the "IRS") to the district indicating potential amounts the district might owe for FICA related to a Section 218 agreement. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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); 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 the submitted information relates to an ongoing audit of the district by the IRS. We note the submitted information consists of eighteen forms 5701, which were prepared by an agent with the IRS and relate to proposed adjustments of the district's tax liability. Upon review, we conclude that the submitted information constitutes "return information" for purposes of section 6103 of title 26 of the United States Code. Accordingly, we find the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.[1]

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,

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

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[1]As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 381736

Enc. Submitted documents

c: Requestor
(w/o enclosures)