



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2010

Ms. Helen Valkavich  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2010-08438

Dear Ms. Valkavich:

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# 382136 (COSA File # 10-0436).

The City of San Antonio (the "city") received a request for information pertaining to the city's relationship to and the expenditure of public funds in support of the Animal Resource Center. You state some of the requested information has been released. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 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. This section encompasses information protected by other statutes. You assert the marked tax identification numbers are excepted from disclosure under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held 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 Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service 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), *dismissed in part, aff'd in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of . . . income, payments, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or . . . the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). The tax identification

numbers you have marked do not fall under the definition of tax return information. *See id.* Therefore, these numbers are not confidential under section 6103(a) of title 26 of the United States Code and may not be withheld on that basis.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *Id.* Accordingly, the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code. You have also marked veterinary license numbers, a membership number, registration numbers, and tax identification numbers, which you seek to withhold under section 552.136. Upon review of our arguments, we find you have not demonstrated how any of these numbers, whether used alone or in conjunction with another device, may be used to obtain money, goods, or services, or to initiate a transfer of funds. Thus, we find you have failed to demonstrate how any portion of the remaining information at issue constitutes “access device numbers” for purposes of section 552.136. Therefore, the city may not withhold the remaining information at issue under section 552.136 of the Government Code.

Section 552.137 of the Government Code reads, in relevant part:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor’s agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor’s agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract[.]

Gov't Code § 552.137(a)-(b), (c)(1)-(3). Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). Upon review, we find the e-mail addresses you have marked were provided to the city as part of a request for qualifications. Thus, the e-mail addresses at issue are of a type specifically excluded by section 552.137(c)(3) of the Government Code. Therefore, the city may not withhold the marked e-mail addresses under section 552.137 of the Government Code.

In summary, the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The remaining information must be released.<sup>1</sup>

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jb

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<sup>1</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 382136

Enc. Submitted documents

c: Requestor  
(w/o enclosures)