ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 5, 2010

Ms. Debbie Chelf
City Secretary - Records Management Officer
City of Jarrell
P.O. Box 828
Jarrell, Texas 76537

OR2010-11871

Dear Ms. Chelf:

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# 389444.

The City of Jarrell (the "city") received a request for copies of building permit applications and plans submitted with those applications for the last two years, as well as contracts and tax forms pertaining to a named individual. You inform us the city has made most of the requested information available to the requestor. You claim a portion of the submitted tax form is excepted from disclosure under section 552.117 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested 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."[2] *Id.* § 552.101. This section encompasses information protected by other statutes, such as 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

[1]Although you cite to section 552.024 of the Government Code, we note section 552.117 of the Government Code is the correct exception for the substance of your argument.

[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

confidential. *See, e.g.*, Attorney General Opinion H-1274 (1978) (tax returns). 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). 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), aff'd in part, 993 F.2d 1111 (4th Cir. 1993). The submitted information consists of 1099-MISC forms, which constitute tax return information. Therefore, the city must withhold the submitted information pursuant to federal law. As our ruling is dispositive, we need not address your argument against disclosure.

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,

Leah B. Wingerson

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 389444

Enc. Submitted documents

c: Requestor
(w/o enclosures)