



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2010

Ms. Susan Denmon Banowsky
Vinson & Elkins
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568

OR2010-18320

Dear Ms. Banowsky:

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# 403514.

The Texas Windstorm Insurance Association (the "association"), which you represent, received a request for all documents and communications for a specified time period relating to commissions paid by the association to a named state representative or any entity in which the named state representative has had or currently has a financial interest.¹ Although you take no position as to the public availability of the submitted documents, you state release of this information may implicate the interests of the named state representative. Accordingly, you state, and provide documentation showing, that the association notified the named state representative of this request for information and of his right to submit arguments to this office as to why the requested documents should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from the named state representative. We have reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² *Id.*

¹You provide documentation indicating the requestor has withdrawn a portion of the request.

²The 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).

§ 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 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).

Subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for disclosure of tax information to the taxpayer or the taxpayer’s designee. *See* 26 U.S.C. § 6103(c), (e)(1)(A)(i) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection(e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual’s right of access under the federal Freedom of Information Act). Section 6103(c) provides, unless the Secretary of Treasury determines that disclosure would seriously impair tax administration, tax record information may be released to any person or persons as the taxpayer may designate in a consent to such disclosure. *See* 26 U.S.C. § 6103(c). The submitted information consists of 1099-MISC forms, which constitute tax return information. The named state representative whose information is at issue states his business activity with the association should be a matter of public record, and he has informed our office that he does not object to release of the submitted information. Therefore, pursuant to the requirements of section 6103(c) of title 26 of the United States Code, the association must release the submitted information.³

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.

³We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 403514

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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