



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 15, 2011

Mr. W. Montgomery Meitler  
Assistant Counsel  
Office of Legal Services  
Texas Education Agency  
1701 North Congress  
Austin, Texas 78701

OR2011-08520

Dear Mr. Meitler:

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# 419256 (TEA PIR# 14883).

The Texas Education Agency (the "agency") received a request for a specified charter and amendments. You state the agency will release most of the responsive information to the requestor. You claim the remaining responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the agency did not comply with its ten- and fifteen-business-day deadlines under section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). The submitted information, therefore, is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You raise section 552.101 of the Government Code, which can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires you to withhold 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." Gov't Code § 552.101. Section 552.101 encompasses section 6103 of title 26 of the United States Code, which makes certain federal tax returns and tax return information confidential. *See* 26 U.S.C. § 6103(a); *see also id.* § 6103(b)(1)-(2) (defining "return" and "return information"). However, section 6104 of title 26 provides for the disclosure of tax return information in certain situations:

(d) Public inspection of certain annual returns[.]

(1) In general.—In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a) —

(A) a copy of —

(i) the annual return filed under section 6033 . . . by such organization,

...

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .

(B) upon request of an individual made at such principal office . . . a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

...

(2) 3-year limitation on inspection of returns.—Paragraph (1) shall apply to an annual return filed under section 6011 or 6033 only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

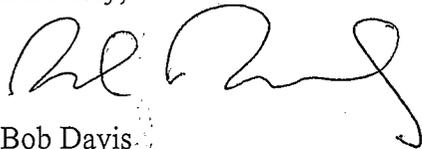
*Id.* § 6104(d)(1)-(2); *see* 26 C.F.R. § 301.6104(d)-1(a). Thus, a section 501(c) or (d) tax-exempt organization must generally make its annual returns available for public inspection for a period of three years from the last day prescribed for filing. The public disclosure requirement of section 6104(d) for a section 501(c) or (d) organization also applies to certain other specified tax filings in addition to the annual return. *See* 26 U.S.C. § 6104(d)(1)(A).

You state the entity at issue in the submitted Form 990 is a section 501(c) tax-exempt organization. You further state the date of filing for the Form 990 was more than three years prior to the date the agency received the request for information. Thus, based on your representations and our review, we determine the three-year inspection period has lapsed regarding the submitted information, and the requestor does not have a right of inspection under section 6104. Therefore, the submitted information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States 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](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,



Bob Davis,  
Assistant Attorney General  
Open Records Division

RSD/eb

Ref: ID# 419256

Enc. Submitted documents

c: Requestor  
(w/o enclosures)