



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Mr. Jonathan T. Koury
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2011-09439

Dear Mr. Koury:

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# 423893.

The City of Bryan (the "city") received a request for e-mails written and received by a named city councilman during a specified time period referring to the Brazos Animal Shelter (the "shelter") or another named entity. You state some of the requested information has been released. Although you take no position on its public availability, you believe the submitted information may implicate the interests of the shelter. You inform us the shelter was notified of this request for the submitted information and of its right to submit arguments to this office as to why the information should not be released.¹ We have 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."² Gov't Code § 552.101. This section encompasses information other statutes make confidential.

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²This office will raise section 552.101 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Federal tax returns and tax return information are generally confidential under section 6103 of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a). Nevertheless, section 6104 of title 26 of the United States Code provides in part:

(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 . . . 6033 only during the 3-year period beginning on the last day prescribed for filing such a 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 tax-exempt organization must generally make its annual information 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). In this instance, the submitted information consists of Form 990 returns filed by the shelter. The returns reflect that the shelter is an organization subject to section 501(c). The returns also reflect that they were filed less than three years prior to the date of the city's receipt of the instant request for information. Therefore, the submitted

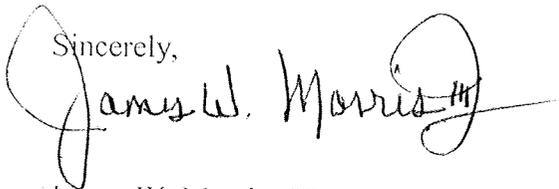
Form 990 returns are generally subject to public disclosure pursuant to section 6104 of title 26 of the United States Code.

We note an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from the shelter. Thus, as the shelter has not demonstrated any of the information at issue is confidential or proprietary for purposes of the Act, the city may not withhold any of the submitted information on either of those grounds. *See id.* §§ 552.101, .110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, as the city does not claim an exception to disclosure, the submitted information must be released to the requestor.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 423893

Enc: Submitted documents

c: Requestor
(w/o enclosures)