



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2011

Ms. Charlotte A. Towe
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2011-11021

Dear Ms. Towe:

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# 425445.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's parole file. You state the department will release some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 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, such as section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

Id. § 508.313(a). You state the submitted information constitutes parole records that are maintained in the department's parole division's files and relate to an individual subject to release to mandatory supervision, parole, or executive clemency. *See id.* § 508.001(5) (defining "mandatory supervision"), .001(6) (defining "parole"). You state the requestor is not authorized to obtain the information at issue under section 508.313(c).¹ *See id.* § 508.313(c)–(d). We also find the information at issue is not of the kind made public under section 552.029 of the Government Code. *See id.* §§ 508.313(f), 552.029(8). We therefore conclude that the department generally must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

We note, however, the submitted information contains the requestor's W-4 form. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential for purposes of section 552.101 of the Government Code. Attorney General Opinion H-1274(1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, 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 with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, 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

¹Section 508.313(c) provides for the release of information encompassed by section 508.313(a) to the governor, a member of the board of pardons and paroles or a parole commissioner, the criminal justice policy council, or an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose. Section 508.313(d) provides that "eligible entity" means a government agency, an organization with which the department contracts or an organization to which the department provides a grant, or an organization to which inmates are referred for services by the department.

to own return information and overrides individual's right of access under the federal Freedom of Information Act). Accordingly, the department must release the requestor's W-4 form to him pursuant to section 6103 of title 26 of the United States Code.

Thus, there is a conflict between the requestor's right of access to his W-4 form pursuant to section 6103 of title 26 of the United States Code and the confidentiality provision of section 508.313 of the Government Code. As federal law, section 6103 of title 26 of the United States Code preempts any conflicting state provisions, including section 508.313 of the Government Code. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Thus, we conclude the department must release the W-4 form to this requestor pursuant to section 6103 of title 26 of the United States Code.

In summary, the department must release the W-4 form to the requestor pursuant to section 6103 of title 26 of the United States Code. The department must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.²

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tf

²As our ruling is dispositive, we need not address your remaining argument.

Ref: ID# 425445

Enc. Submitted documents

c: Requestor
(w/o enclosures)