



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2011

Mr. Wayne S. Hollingsworth
Armbrust & Brown, P.L.L.C.
100 Congress Avenue, Suite 1300
Austin, Texas 78701

OR2011-14815

Dear Mr. Hollingsworth:

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# 431444.

The Circuit Events Local Organizing Committee (the "committee") received five requests for information related to a specified open meeting, including meeting minutes and documents discussed at the meeting. You claim that portions of the requested information are exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information, which consists of Internal Revenue Service ("IRS") forms 1024, 2848, and 8718.¹ As your representative sample does not include minutes, nor have you indicated you wish to withhold any such information from disclosure, we assume that you have released any responsive minutes to the requestor, to the extent such information exists and was maintained by the committee when the request for information was received. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You assert the submitted information is excepted under section 552.101 of the Government Code, which 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, including federal law. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* 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 (the “IRS”)] 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 IRS 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). We note section 6103(a) only limits the distribution of tax returns and return information by a governmental body; this section does not otherwise protect copies of tax returns or return information. *See Heathman v. U.S. Dist. Ct.*, 503 F.2d 1032, 1035 (9th Cir. 1974) (restrictions of section 6103 inapplicable to discovery of tax information in hands of taxpayer); *see also* IRS Fact Sheet #FS-97-12 (stating taxpayers may make their own tax information public).²

You state none of these forms has been submitted to the IRS. Based on our review, we find you have failed to demonstrate the submitted drafts of IRS Forms 1024, 2848, and 8718 fall within the definition of “return information” under section 6103(b)(2). Therefore, none of the submitted information is confidential under section 6103(a), and the committee may not withhold the information under section 552.101 of the Government Code on that basis. *Cf. Ohio ex. rel. Beacon Journal Publ’g Co. v. City of Akron*, No. 15872, 1993 WL 303267, at *3 (Ohio Ct. App.— 9th Dist. 1993) (coverage of section 6103(a) limited to information filed with IRS), *rev’d on other grounds*, 640 N.E.2d 164 (Ohio 1994).

You also claim the submitted information is excepted from disclosure under section 552.101 in conjunction with section 6104(a) of title 26 of the United States Code. Section 6104 is applicable to certain exempt organizations and certain trusts, and provides for the disclosure of information in certain situations if an organization is exempt from taxation under

²A copy of this document may be found on the IRS’s website: <http://www.irs.gov/pub/irs-news/fs-97-12.pdf>.

section 501(a) or section 527. *See* 26 U.S.C. § 6104(a), (d)(1)-(2). You argue even though section 6104(a) requires an organization granted exempt status to disclose the application for tax exemption filed by the organization, since the committee has not been granted exempt status, its application is confidential. Based upon your representations, we find the public inspection requirement in section 6104(a) is inapplicable to the submitted information. However, that finding does not establish the information at issue is confidential for purposes of section 6103, and the committee may not withhold the information under section 552.101 of the Government Code on that basis. As you raise no other exception to disclosure, the committee must release the submitted information.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 431444

Enc. Submitted documents

c: 5 Requestors
(w/o enclosures)