



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2011

Mr. R. Brooks Moore
Managing Counsel, Governance
Texas A&M University
200 Technology Way, Suite 2079
College Station, Texas 77845

OR2011-17412

Dear Mr. Moore:

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# 437138 (TAMU 11-414).

Texas A&M University (the "university") received a request for (1) the university's response to the 2008 Internal Revenue Service (the "IRS") College and University Compliance Project questionnaire; (2) a subsequent letter from the IRS to the university regarding selection for a large case examination; and (3) the university's most recent 990-T filing to the IRS. You state you will release items two and three to the requestor. You claim that the remaining 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.

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 No. 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 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).

You state the submitted information, Form 14018 Compliance Questionnaire Colleges and Universities, consists of the university’s IRS filings. Upon review, we agree the submitted information consists of data furnished to the IRS with respect to a return. Therefore, we conclude the submitted information constitutes “return information” for purposes of section 6103 of title 26 of the United States Code. As noted above, “return information” is generally confidential. See 26 U.S.C. § 6103(a). However, we also note a taxpayer may release his or her own tax information. See IRS Fact Sheet #FS-97-12 (stating taxpayers may make their own tax information public).¹ Accordingly, we find the submitted Form 14018 is generally confidential under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. However, the university has the discretion to disclose the submitted Form 14018.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

¹A copy of this document may be found on the IRS’s website: <http://www.irs.gov/pub/irs-news/fs-97-12.pdf>.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)