



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2012

Mr. Dick H. Gregg, III
Counsel for the City of Kemah
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2012-16198

Dear Mr. Gregg:

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# 467483.

The City of Kemah (the "city"), which you represent, received a request for records related to the city's payments to IRS Tax Form 1099 recipients for a specified time period. You claim that the submitted 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.

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 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) renders tax return information confidential. *See, e.g.,* Attorney General Opinion H-1274 (1978) (tax returns). Section 6103(b) of title 26 of the United States Code defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of . . . income, payments, . . . 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 . . . the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . 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). Upon review, we find you have failed to demonstrate how the submitted spreadsheets created by the city are subject to section 6103(a) of title 26 of the United States Code. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code on that basis. As no further exceptions are raised, the city must release the submitted information.¹

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 467483

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information being released may contain social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).