



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2016

Ms. Tiffany Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2016-03552A

Dear Ms. Evans:

This office issued Open Records Letter No. 2016-03552 (2016) on February 12, 2016. Since that date, the City of Houston (the "city") informs us that, at the time of its request for a decision, the city failed to submit the requested third party information for review and did not notify the third party at issue of the request. Thus, we must address the interests of the third party whose information is at issue. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on February 12, 2016. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 607687 (GC No. 22853).

The city received a request for any Safe Clear bids or responses, requests for qualifications, or statements of qualifications submitted by specified entities during a specified period of time. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Sterling Interest Investments, Inc. dba Elite Collision Center (collectively, "Sterling"). Accordingly, you state you notified the third party of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received arguments on behalf of Sterling. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit

received arguments on behalf of Sterling. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Sterling raises section 552.102(a) of the Government Code for some of its information. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" *Id.* § 552.102(a). However, section 552.102(a) applies to information in the personnel file of a government employee. *See id.* None of the information at issue consists of information in the personnel file of a government employee. Therefore, section 552.102(a) is not applicable in this instance and the city may not withhold any of the information at issue on that basis.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms), 226 (1979) (W-2 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 Treasury] 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). Thus, the submitted W-4 forms and forms 940, 941, 1065, 1120, 4532, 8879-C, and 8879-PE, and their respective attachments, which we have marked, constitute tax return information that are confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

We note portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides information relating

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

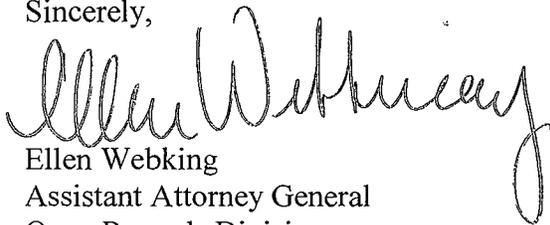
We note portions of the remaining information are subject to section 552.136 of the Government Code. Section 552.136 states, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the information we have marked under section 552.136 of the Government Code. The city must release the remaining 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 607687

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)