



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 27, 2016

Ms. Lauren Downey  
Assistant Attorney General  
Public Information Coordinator  
General Counsel Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2016-21721

Dear Ms. Downey:

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# 627806 (PIR No. 16-44675).

The Office of the Attorney General (the "OAG") received a request for information produced to the OAG by the defendant in a specified case.<sup>1</sup> The OAG states it will release some information. The OAG claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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<sup>1</sup>We note the OAG sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.101. This section encompasses information that other statutes make confidential. Section 6103 of title 26 of the United States Code makes certain federal tax returns and tax return information confidential. *See* 26 U.S.C. § 6103(a); *see also id.* § 6103(b)(1)–(2) (defining “return” and “return information”). However, section 6104 of title 26 provides for the disclosure of tax returns in certain situations:

(d) Public inspection of certain annual returns[.]--

(1) In general.--In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a)--

(A) a copy of--

(i) the annual return filed under section 6033 . . . by such organization,

...

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .

(B) upon request of an individual made at such principal office . . . , a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

...

(2) 3-year limitation on inspection of returns.--Paragraph (1) shall apply to an annual return filed under section 6011 or 6033 only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

*Id.* § 6104(d)(1)(A)(i), (d)(1)(B), (d)(2); *see* 26 C.F.R. § 301.6104(d)-1(a). Thus, a section 501(c) or (d) tax-exempt organization must generally make its annual returns available for public inspection for a period of three years from the last day prescribed for filing.

The submitted information contains tax returns and return information. This information includes a Form 990-PF tax return that the OAG states was filed by a section 501(c) tax-exempt organization. The OAG informs us, and the information at issue reflects, the information at issue was filed more than three years prior to the date the OAG received the request for information. Thus, the three-year inspection period has lapsed with regard to this return, and the requestor does not have a right of inspection under section 6104. Accordingly, the OAG must withhold the Form 990-PF tax return under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The submitted information also contains tax returns and return information that are not subject to section 6104(d). Thus, the forms we marked, and their respective attachments, are also confidential under section 6103(a) of title 26 of the United States Code, and the OAG must withhold this information pursuant to section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find the information the OAG marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

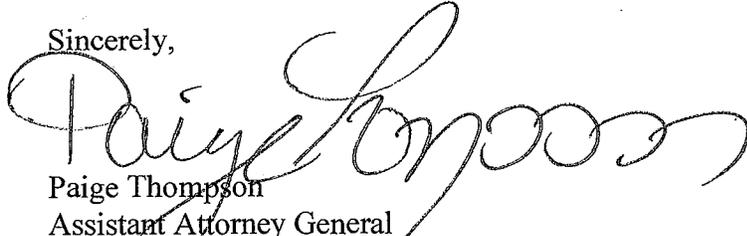
In summary, the OAG must withhold the Form 990-PF tax return, the forms we marked, and their respective attachments, under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 627806

Enc. Submitted documents

c: Requestor  
(w/o enclosures)