



June 10, 1999

Ms. Pamela S. Bacon
Public Information Administrator
University of Texas System
601 Colorado Street
Austin, Texas 78701-2982

OR99-1629

Dear Ms. Bacon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126389.

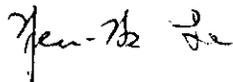
The University of Texas System (the "system") received a request for three persons' W-2's. You assert that you must withhold the federal tax documents under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted documents.

First, you state that you do not have the W-2's for David Gerhardt or Laura Kilcrease. The Public Information Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Decision No. 362 (1983). Because the system does not have the W-2's for the two specified individuals, it does not have to comply with that portion of the request.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). After reviewing your arguments, we find that you must withhold the W-2's from disclosure under section 552.101 as information deemed confidential by federal statute.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 126389

Encl: Submitted documents

cc: Mr. Stephen N. Lisson
Editor & Publisher
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