



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 20, 2003

Mr. David Anderson
General Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2003-4262

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183119.

The Texas Education Agency ("TEA") received a request for information relating to charter schools in Harris County. You inform us that TEA is releasing some of the requested information. You claim that some of the remaining information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. You also assert that the request implicates the proprietary interests of six private business entities who provided the information to TEA. You notified the interested parties of TEA's receipt of this request and of their right to submit arguments to this office as to why information relating to them should not be released.¹ You claim that the submitted information is excepted from disclosure or that its release may implicate the interested parties' interests. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). You inform us that TEA sent notices to Beatrice Mayes Institute Charter School, Ripley House Charter School, Ser-Ninos Charter School, Paul Yzaguirre School for Success, Kipp, Inc. Charter, and Jessie Jackson Academy. As of the date of this decision, this office has received no correspondence from any of the six parties that TEA notified.

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

Thus, none of these parties has demonstrated that the release of any portion of the submitted information would implicate its proprietary interests. *See, e.g.*, Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address TEA's claim under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You claim that information contained in responsive Internal Revenue Service ("IRS") Form 990s is confidential under federal law. You inform us that under section 6033 of title 26 of the United States Code, certain tax-exempt organizations are required to file an annual return (Form 990) with the IRS. You explain that an entity that applies to TEA for an open-enrollment charter must provide its annual return to TEA with its charter application. You state that the submitted documents are the annual Form 990 returns of several tax-exempt organizations that hold charters. You assert that some of the information contained in these documents is confidential under section 6104 of title 26 of the United States Code.

As a general rule, federal tax returns and tax return information are confidential under section 6103 of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a); *see also id.* § 6104(b)(1)-(2) (defining "return" and "return information"). Section 6104 of title 26 provides in part:

(b) Inspection of annual information returns. – The information required to be furnished by section[] 6033 . . . shall be made available to the public at such times and in such places as the Secretary may prescribe. *Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a) or a political organization exempt from taxation under section 527) which is required to furnish such information. . . .*

...

(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 organizations,

...

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.

...

(3) Exceptions from disclosure requirement. –

(A) Nondisclosure of contributors, etc. – In the case of an organization which is not a private foundation (within the meaning of section 509(a)) or a political organization exempt from taxation under section 527, *paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization. . . .*

26 U.S.C. § 6104 (emphasis added). You state that the submitted Form 990s contain the names of contributors to tax-exempt organizations. You do not inform us that any organization to which this information pertains is a private foundation or a political organization that is excluded from the scope of subsections (b) and (d) of section 6104. Based on your representations and our review of the information at issue, we agree that the names of contributors that are contained in the submitted documents are confidential under sections 6103 and 6104 of title 26 of the United States Code. *See Stanbury Law Firm, P.A. v. Internal Revenue Service*, 221 F.3d 1059 (8th Cir. 2000). TEA must withhold that information, which we have marked, under section 552.101 of the Government Code.

We note that the submitted documents also contain social security numbers. A social security number may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 at 2-4 (1994)*. It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes TEA to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes

criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, TEA should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

TEA also raises section 552.136 of the Government Code. This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) 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.

Gov't Code § 552.136. We have marked account number information in the submitted documents that TEA must withhold under section 552.136.

In summary, TEA must withhold the marked information in the Form 990s that is excepted from disclosure under section 552.101 of the Government Code. TEA also must withhold the account number information that is excepted from disclosure under section 552.136. The social security numbers in the Form 990's also may be excepted from disclosure under section 552.101. The rest of the submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/JWM/sdk

Ref: ID# 183119

Enc: Submitted documents

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(w/o enclosures)