



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2009

Ms. Julie Fort
Strasburger & Price, LLP
2801 Network Boulevard, Suite 600
Frisco, Texas 75034

OR2009-00848

Dear Ms. Fort:

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# 332667.

The Plano Economic Development Board, Incorporated, (the "board"), which you represent, received a request for all documents associated with "private funds." You state that you have released the board's three most recent Form 990 tax returns to the requestor pursuant to federal law. *See* 26 U.S.C. § 6104(d). You contend that the rest of the requested documents are not subject to the Act because they do not relate to that part of the board that receives public funds and, alternatively, that they are excepted from disclosure by sections 552.101 and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of the responsive information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The Act requires "governmental bodies" to make public, with certain exceptions, information in their possession. Section 552.003 of the Government Code defines "governmental body,"

¹We assume that 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.

in part, as “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.” Gov’t Code § 552.003(1)(A)(xii). This office has previously ruled that the board constitutes a governmental body under section 552.003(1)(A)(xii) with respect to the services it performs under its contract with the City of Plano (the “city”). *See* Open Records Letter Ruling No. 2007-16399 (2007). However, as you note, in certain instances, based on our examination of the specifics of a situation, this office will find that only records related to those parts of an entity directly supported by public funds are subject to the Act. *See* Open Records Decision No. 602 at 5 (1992) (determining that records of Dallas Museum of Art pertaining to private collection of artwork for which City of Dallas had provided no direct support were not subject to Act).

We do not agree that Open Records Decision No. 602 applies in this instance. In support of your claim that the requested information is not subject to the Act, you have provided documentation showing that the private funds are received exclusively from private sources and are kept in a separate interest-bearing investment account. You inform us that the contract between the board and the city addresses only the use of public funds and that all decisions regarding use of the private funds are made by the board without direction from the city. However, you have not submitted records that do not concern the economic development of the city for which the board receives public funds, or pointed us to a separate program funded solely by the private funds. Instead, the contract and other submitted information indicate that the city provides general support for the operation of the board and that the city and board share a common purpose and objective, namely the economic development of the city. *See Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988); Open Records Letter Ruling No. 2007-16399 (2007).

Moreover, the submitted information concerns matters related to the economic development activities the board performs for the city. The submitted information also demonstrates the closeness of the relationship between the city and the board and the nature of the general support provided by the city to the board. For example, section 3.02 of the submitted Agreement Between City of Plano and Plano Economic Development Board requires that the city “loan” up to five full time employees to the board, including the board’s Executive Director, Director of Business Retention and Expansion, and Director of Technology Marketing and Redevelopment, for the purpose of conducting economic development activities. The submitted General Conditions of Agreement further requires that the city utilize its equipment, materials, and personnel to publish newsletters for the board. Based on the totality of these facts, we conclude that the board in its entirety constitutes a governmental body within the meaning of section 552.003 and that all of the requested information is subject to the Act. *See* Open Records Decision No. 621 at 5 (1993) (determining that entire Arlington Economic Development Foundation constitutes governmental body where such foundation had received both city funding and private contributions). Accordingly, we will address the exceptions to disclosure you have raised pursuant to section 552.301 of the Government Code.

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 that other statutes make confidential. 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.* § 6103(b)(1)-(2) (defining "return" and "return information"). The board's Form 990s other than the three most recently filed forms constitute tax return information that is confidential under section 6103(a) and must be withheld pursuant to section 552.101 of the Government Code. *See* 26 U.S.C. § 6103(b)(2) (defining "return information"); *see also Mallas v. Kolak*, 721 F.Supp. 748 (M.D.N.C. 1989) ("return information" includes any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26). The submitted Form 1099 also constitutes tax return information; therefore the board must withhold this information as well under section 552.101 in conjunction with section 6103(a).

You argue that the name and address of any donor of private funds is excepted from disclosure under federal law. Section 6104 of title 26 provides that certain documents are excepted from the confidentiality requirements of section 6103, stating in relevant part:

(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 6033 or section 6012(a)(6) 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)-(2); *see* 26 C.F.R. § 301.6104(d)-1(a). Thus, a section 501 tax-exempt organization must generally make its annual information returns available for public inspection for a period of three years from the last day prescribed for filing. The public disclosure requirement of section 6104(d) for a section 501(c) or (d) organization also applies to certain other specified tax filings in addition to the annual return. *See* 26 U.S.C. § 6104(d)(1)(A). However, the law includes an exception to this disclosure requirement for information about contributors to the organization. Section 6104(d)(3) reads as follows:

(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

Id. § 6104(d)(3). Thus, under subsection (3), the disclosure requirement of paragraph (1) for the tax returns and other filings of certain tax exempt organizations does not apply to the name and address of the contributors to the organization found in the returns. According to the information you have submitted to this office, the board is an organization subject to section 501(c). Therefore, the board's three most recent Form 990s are subject to public disclosure pursuant to section 6104(d), and, as we have noted above, you state you have released these to the requestor. Assuming that the board is not a section 509(a) private foundation or a political organization exempt from taxation under section 527, the names of contributors are confidential under section 6103(a) and must be withheld under section 552.101 to the extent that such information is contained within tax return information. *See id.* §§ 6103(a); 6104(d)(1), (3)(A); 26 C.F.R. § 301.6104(d)-1(b)(4). However, the names of contributors in the submitted information do not appear to be in tax return information. Thus, to the extent that they are not contained in tax return information, the names of contributors in the submitted information are not confidential under section 6103(a).

The submitted information also contains bank account numbers and account access information. Section 552.136 of the Government Code states that “[n]otwithstanding 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.”

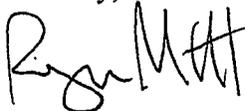
Gov't Code § 552.136. Accordingly, the board must withhold the bank account numbers and account access information you have marked, as well as the additional account information we have marked, under section 552.136.

In summary, we find that the entire board is a governmental body and the requested information is therefore subject to the Act. The board must withhold the requested tax return information, other than the three most recently filed Form 990s, under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The board must release its three most recently filed Form 990s, but, assuming that the board is not a section 509(a) private foundation or a political organization exempt from taxation under section 527, must redact any names and addresses of contributors contained within those forms. The board also must withhold the bank account numbers and account access information you have marked and we have marked under section 552.136 of the Government Code. The board must release the remainder of the requested 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.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 at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 332667

Enc. Submitted documents

cc: Requestor
(w/o enclosures)