



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 26, 2009

Ms. Mari M. McGowan
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2009-02560

Dear Ms. McGowan:

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# 335769.

The Plano Independent School District (the "district"), which you represent, received a request for several categories of information pertaining to a named teacher.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.137, and 552.143 of the Government Code. In addition, you note that release of the requested information may implicate the privacy interests of a third party. Accordingly, you state that you notified the individual who is the subject of the requested information of her right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments submitted by the interested party. We have considered the submitted arguments you claim and reviewed the submitted sample of information.

Initially, we note that the submitted information consists only of a W-2 federal tax form. You characterize this information as a "representative sample." *See* Gov't Code § 552.301(e)(1)(D) (governmental body must submit, in connection with request for attorney general decision, the requested information or representative samples thereof). However, in our opinion, the W-2 tax form is not representative of all of the types of information requested. Please be advised that this open records letter only applies to the type of information you have submitted for our review. Therefore, this opinion 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. *See id*

¹You indicate the district sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

§ 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). To the extent other information responsive to the request existed on the date the district received this request, we assume you have released it. If you have not released this information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 made confidential by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). Thus, the submitted W-2 form constitutes tax return information that the district must withhold under section 552.101 of the Government Code in conjunction with federal law. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 335769

Enc. Submitted documents

c: Requestor
(w/o enclosures)