



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2011

Mr. W. Montgomery Meitler  
Assistant Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2011-00570

Dear Mr. Meitler:

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# 406929 (TEA PIR# 14232).

The Texas Education Agency (the "agency") received a request for the charter application for the School of Science and Technology. You state most of the responsive information will be released to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 another statute makes confidential. You assert the submitted information should be withheld in its entirety under federal law. 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"). However, section 6104 of title 26 provides in relevant part as follows:

(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)-(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 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).

You state the entity at issue in the submitted Form 990 is a section 501(c) tax-exempt organization. You further state the date of filing the Form 990 was more than three years prior to the date the agency received the request for information. Thus, based on your representations and our review, we determine the three-year inspection period has lapsed regarding the submitted information, and the requestor does not have a right of inspection under section 6104. Therefore, the submitted information must be withheld from disclosure

under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

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](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, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/vb

Ref: ID# 406929

Enc. Submitted documents

c: Requestor  
(w/o enclosures)