



ATTORNEY GENERAL OF TEXAS
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March 24, 2011

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OR2011-04061

Dear Ms. Banowsky:

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# 412430.

The Texas Windstorm Insurance Association ("TWIA") and the Texas FAIR Plan Association ("TFPA")¹ received a request for information relating to payments made to insurance agents or other individuals or entities that would trigger the need for an IRS 1099 form.² You indicate some of the requested information has been released. You believe the other responsive information may implicate the interests of third parties. You state the third parties concerned were notified of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.³ We

¹We note TFPA is established under chapter 2211 of the Insurance Code. *See* Ins. Code § 2211.001 *et seq.*

²You inform us the requestor clarified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

³*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

received correspondence from the parties and representatives of parties listed below.⁴ We have considered the third parties' comments and reviewed the representative sample of information you submitted.⁵

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⁵This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes either TWIA or TFPA to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."⁶ Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 6103(a) of title 26 of the United States Code provides in part:

(a) General rule.—Returns and return information shall be confidential, and except as authorized by this title—

...

(2) no officer or employee of any State[]; and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information . . .

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.[]

26 U.S.C. § 6103(a). Prior decisions of this office have held 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). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Section 6103(b) defines "return information" as meaning "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or . . . the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest . . . or offense[.]" 26 U.S.C. § 6103(b)(2)(A).

In response to questions submitted to TWIA and TFPA under section 552.303 of the Government Code, you inform us the submitted information was assembled and maintained for the purpose of preparing and sending IRS 1099 forms and has been included in 1099

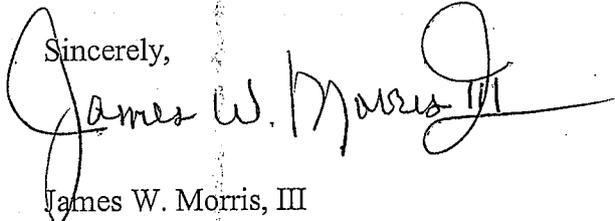
⁶This office will raise section 552.101 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

forms sent on behalf of TWIA and TFPA.⁷ You also state the submitted information either has been or will be furnished to the Internal Revenue Service by the end of April 2011. Based on your representations, we find the submitted information constitutes return information made confidential by section 6103(a) of title 26 of the United States Code. We therefore conclude TWIA and TFPA must withhold the submitted information in its entirety on that basis under section 552.101 of the Government Code.⁸ We note, however, that in this case, the wording of the request for information necessarily implicates federal tax provisions. Information concerning payments made by TWIA and TFPA may not, under other circumstances, be confidential under federal law.

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

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 412430

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁷See Gov't Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by Gov't Code § 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

⁸As we are able to make this determination, we need not address the comments we received from the third parties.

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