



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2013

Ms. Cynthia Lewis
City of Itasca
126 North Hill Street
Itasca, Texas 76055

OR2013-04019

Dear Ms. Lewis:

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# 483268.

The City of Itasca (the "city") received a request for financial information related to a named individual and class of similar individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision No. 561 at 8-9 (1990), 555 at 102. We assume the city has made a good-faith effort to do so.

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 protected by other statutes, including section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records

¹You argue the submitted information is "confidential and personal." We understand you to raise section 552.101 of the Government Code based on the substance of your arguments.

Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as:

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 with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service (the "IRS") regarding a taxpayer's liability under title 26 of the United States Code. *See Chamberlain v. Kurtz*, 589 F.2d 827, 840-41 (5th Cir. 1979); *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the city must withhold the submitted W-2 form under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.²

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,



Eamon D. Briggs
Assistant Attorney General
Open Records Division

EDB/eb

²As our ruling is dispositive, we need not address your argument against disclosure.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)