



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2013

Mr. Sonny Eckhart
Assistant Criminal District Attorney
Polk County
101 West Mill Street, Suite 247
Livingston, Texas 77351

OR2013-18586

Dear Mr. Eckhart:

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# 503969.

The Polk County Criminal District Attorney's Office (the "district attorney's office") received a request for copies of the 1099 tax forms which relate to payments made to ten named individuals during a defined time frame. 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.

Initially, we must address the obligations of the district attorney's office under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See Gov't Code* § 552.301(b). You state the district attorney's office received the request for information on August 9, 2013. Accordingly, you were required to state the exceptions that apply no later than August 23, 2013. However, you did not state any exceptions that apply until August 30, 2013. Consequently, the district attorney's office failed to comply with the requirements of section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third-party interests

are at stake or when information is confidential under other law. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of this section to 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 protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) renders tax return information confidential. *See, e.g.*, Attorney General Opinion H-1274 (1978) (tax returns). Section 6103(b) of title 26 of the United States Code defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of . . . income, payments, . . . 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, . . . or offense[.]” *See* 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 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). The submitted information consists of tax return information. Therefore, the district attorney’s office must withhold the submitted information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 503969

Enc. Submitted documents

c: Requestor
(w/o enclosures)