



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2014

Mr. David T. Ritter  
Assistant City Attorney  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2014-07601

Dear Mr. Ritter:

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# 522922.

The City of Plano (the "city") received a request for information pertaining to the 2010 federal tax return of the Plano Economic Development Board, Inc. You state you will release some information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, the requestor asserts and you acknowledge the city failed to comply with section 552.301(b) of the Government Code in seeking an open records decision from this

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<sup>1</sup>Although you raise section 552.024 of the Government Code as an exception to disclosure; this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain personal information relating to the official or employee that is held by the employing governmental body. Gov't Code § 552.024. We note section 552.117 of the Government Code is the proper exception to assert.

office. *See id.* § 552.301(b). We note the city also failed to comply with its fifteen-business-day deadline under section 552.301(e) of the Government Code. *See id.* § 552.301(e). A governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason may exist to withhold information when the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.101 and 552.117 can provide compelling reasons to overcome this presumption, we will consider the applicability of these exceptions 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 exception encompasses information other statutes make confidential. Federal tax return information is confidential under section 6103 of title 26 of the United States Code.<sup>2</sup> For purposes of section 6103, “return information” includes “the nature, source, or amount of income” of a taxpayer. *See* 26 U.S.C. § 6103(b)(2); *see also* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Upon review, we find the city must withhold the submitted W-2 forms in their entirety under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.<sup>3</sup>

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](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

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 522922

Enc. Submitted documents

c: Requestor  
(w/o enclosures)