



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2016

Mr. T. Daniel Santee
Counsel for the City of Jourdanton
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2016-28175

Dear Mr. Santee:

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# 638825.

The City of Jourdanton (the "city"), which you represent, received a request for the complete personnel file of a named individual. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that section 6103(a) renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns). 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 . . . 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 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), *dismissed in part, aff’d in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Therefore, we conclude the information you indicated constitutes “tax return information” as contemplated by section 6103(a) of title 26 of the United States Code. *See Johnson v. Sawyer*, 120 F.3d 1307, 1330 (5th Cir. 1997) (tax return information is confidential unless disclosure is permitted by exception found in section 6103) (citing *Chandler v. United States*, 687 F. Supp. 1515, 1516 n.1 (C.D. Utah 1988), *aff’d*, 887 F.2d 1397 (10th Cir. 1989) (notice of levy disclosed tax return information)). Accordingly, the city must withhold the tax information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the form in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form is confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.122(b) exempts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee’s overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. ORD 626 at 6. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5. Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold the Jourdanton Police Firearms Instruction Exam. You assert the questions at issue test the knowledge of the examinee in a particular area. You also inform us the city uses the questions at issue on a continuing basis. Based upon your representations and our review, we find the information at issue qualifies as test items under section 552.122(b) of the Government Code. Accordingly, the city may withhold the information at issue under section 552.122 of the Government Code.

In summary, the city must withhold the tax information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of

the United States Code. The city must withhold the submitted I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The city may withhold the information at issue under section 552.122 of the Government 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/akg

Ref: ID# 638825

Enc. Submitted documents

c: Requestor
(w/o enclosures)