



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2017

Ms. Kimberly Kopecky
Deputy City Secretary
City of Fulshear
P.O. Box 279
Fulshear, Texas 77441

OR2017-01460

Dear Ms. Kopecky:

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# 640529.

The City of Fulshear (the "city") received a request for all communications pertaining to a specified entity and all events organized by that entity.¹ You state you have released most of the information to the requestor. You claim a portion of 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.

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,

¹We note the requestor modified her request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² *See Gov’t Code* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, an e-mail address that a governmental entity maintains for one of its officials or employees, or an e-mail address provided to a governmental body by a person who has or seeks a contractual relationship with the governmental body or by the contractor’s agent. *See id.* § 552.137(c). Upon review, we find the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure, or subsection (c) applies.

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 e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure, or subsection (c) applies. The city must release the remaining information.

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

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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/som

Ref: ID# 640529

Enc. Submitted documents

c: Requestor
(w/o enclosures)