



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 3, 2019

Mr. Jonathan Miles
HHSC Open Records Attorney
Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-27746

Dear Mr. Miles:

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# 789258 (HHSC# 19086).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified request for offers. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the submitted information may implicate the proprietary interests of Telelanguage, Inc. ("Telelanguage"). Accordingly, you state, and provide documentation showing, you notified Telelanguage of the request and of its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Telelanguage. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information consists of a contract for the purchase of services from a private vendor that is subject to section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

- (a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:
 - (1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise

requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The submitted contract is valued at more than \$15,000, is between the commission, a state agency, and Telelanguage, a private vendor, for the purchase of services, and the contract is not expired or completed. *See id.* §§ 2261.002(2) ("state agency" has meaning assigned by Gov't Code § 2151.002). Although Telelanguage seeks to withhold portions of the submitted information under sections 552.104 and 552.110 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the commission may not withhold any portion of the submitted information under section 552.104 or section 552.110 of the Government Code. However, a portion of the submitted information may be excepted under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.¹ Under the Supremacy Clause of the United States Constitution, the United States Constitution and duly-enacted federal statutes are "the supreme law of the Land," and states have a responsibility to enforce federal law. *See* U.S. Const., art. VI, cl. 2; *Howlett v. Rose*, 496 U.S. 356, 367-69 (1990). As a federal law, section 6103(a) preempts any conflicting state provisions, including section 2261.253 of the Government Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law); *English v. General Elec. Co.*, 796 U.S. 72, 79 (1990) (noting state law is preempted only to extent it actually conflicts with federal law). Thus, we will address applicability of section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

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 section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records 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[.]" *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

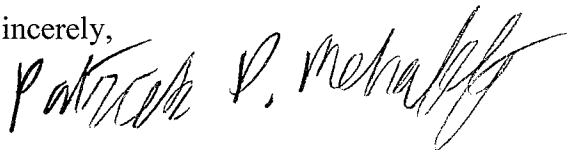
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). Thus, the submitted tax return, which we marked, constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code and the commission must withhold it under section 552.101 of the Government Code. As no other exceptions remain, the commission must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/mo

Ref: ID# 789258

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)