



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 18, 2020

Ms. Annette Villarreal, CMC, CPM
City Secretary
City of Palmview
400 West Veterans Boulevard
Palmview, Texas 78572-8327

OR2020-28946

Dear Ms. Villarreal:

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# 852055 (ORR# 1920-139).

The City of Palmview (the "city") received a request for all records related to a named business and a specified grant program during a specified time period. You indicate the city does not have information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, 552.147, and 552.160 of the Government Code.² 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

¹ The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

² We note in a letter dated October 21, 2020, we asked the city to provide additional information pursuant to section 552.303 of the Government Code. See Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the information submitted by the city on November 10, 2020, pursuant to that request.

Code § 552.101. This section encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as the following:

[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[.]

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). Accordingly, the city must withhold the 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.³

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov’t Code § 552.130*. Accordingly, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.⁴

Section 552.160 of the Government Code provides, in relevant part:

(b) Except as provided by Subsection (c), the following information maintained by a governmental body is confidential:

(1) the name, social security number, house number, street name, and telephone number of an individual or household that applies for state or federal disaster recovery funds;

(2) the name, tax identification number, address, and telephone number of a business entity or an owner of a business entity that applies for state or federal disaster recovery funds; [and]

³ As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

⁴ As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

(3) any other information the disclosure of which would identify or tend to identify a person or household that applies for state or federal disaster recovery funds.

(c) The street name and census block group of and the amount of disaster recovery funds awarded to a person or household are not confidential after the date on which disaster recovery funds are awarded to the person or household.

Id. § 552.160(b), (c); *see also id.* § 552.160(a); *id.* § 418.004(1) (defining “disaster” for purposes of section 552.160). You state the remaining information consists of confidential information concerning individuals or business entities who applied for disaster recovery assistance. Based upon your representations and our review, we find section 552.160 is applicable to some of the information at issue. Accordingly, the city must withhold the information we have marked under section 552.160 of the Government Code.⁵ However, we find the remaining information does not identify or tend to identify a person, household, or business entity that applied for state or federal disaster recovery funds. Therefore, the city may not withhold any portion of the remaining information under section 552.160 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the city: (1) must withhold the 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; (2) must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code; (3) must withhold the information we have marked under section 552.160 of the Government Code; (4) must withhold the information we have marked under section 552.136 of the Government Code; and (5) 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

⁵ As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jm

Ref: ID# 852055

Enc. Submitted documents

c: Requestor
(w/o enclosures)