



Lynn Fitch
ATTORNEY GENERAL

OPINIONS DIVISION

January 31, 2020

Herb Frierson
Commissioner of Revenue
Post Office Box 22828
Jackson, Mississippi 39225

Re: Public Records Act

Dear Commissioner Frierson:

Attorney General Lynn Fitch has received your opinion request and has assigned it to me for research and reply.

OFFICIAL OPINION

Issues Presented

According to your request, the Department of Revenue (the "Department") maintains information regarding tax credits for businesses contributing to "eligible charitable organizations" under Section 27-7-22.41 of the Mississippi Code and to individuals contributing to "qualifying charitable organizations" or "qualifying foster care charitable organizations" under Section 27-7-22.39. The Department publishes lists of these charitable organizations pursuant to Sections 27-7-22.41(6) and 7-7-22.39(11), respectively. You further provide:

For either credit, the charitable organization has to submit an application and supporting documentation to the Department of Revenue to be certified as an eligible charitable organization, qualifying charitable organization and/or qualifying foster care charitable organization. When an organization is certified, it is published in the appropriate list of charitable organizations. Businesses or individuals then submit an application for an allocation (of) the credit indicating which charitable organization they intend to contribute to and the amount of the contribution.

We are expecting requests to disclose how much each charitable organization received in total. We maintain this information and with minimal effort can calculate. However, we would like guidance if that would be available under the Public Records Act or if it would be confidential under statutory provisions.

Each individual or business taxpayer is submitting return information furnished under the Income Tax Chapter in the form of the application for allocation of the credit, which clearly makes that specific taxpayer's contribution and credit amount protected under Miss. Code Ann. Section 27-7-83. The statute does not indicate that the confidentiality only covers the taxpayer though. Miss. Code Ann. Section 27-7-83 was codified long before Miss. Code Ann. Sections 27-7-22.39 and 27-7-22.41, so it may have been the intent to only cover the taxpayer, but it is not specifically stated. The statutes authorizing the credits require publication of the charitable entities but it does not specifically state that the amounts contributed can be published.

We feel comfortable that we can publish the total amount of credits based on contributions to each entity type (eligible charitable organizations licensed with the Department of Child Protection Services, eligible charitable organizations providing job training, workforce development or educational services but not licensed with the Department of Child Protection Services, qualifying charitable organizations, and qualifying foster care charitable organizations) under the statistical exemption to confidentiality. However, we would appreciate your opinion as to whether disclosing how much any specific charitable organization received under the program is prohibited or allowed.

Specifically, you ask: "Are the total contribution amounts under the Children's Promise Act to specific Eligible Charitable Organizations, Qualifying Charitable Organizations, or Qualifying Foster Care Charitable Organizations available through a public records request?"

Response

Yes. The total contribution amounts to the individual charitable organizations under the Children's Promise Act are subject to disclosure under the Public Records Act.¹

¹In your request, you state you could calculate the requested totals with minimal effort. Our office has consistently opined, the Public Records Act does not require a public body to create a record that does not already exist. MS AG Op., Robertson (October 13, 2006). Thus, while the information in question is not exempt from disclosure under the Public Records Act, the Department does not have an affirmative duty to create a record in response to a public records request.

Applicable Law

Section 27-3-77 exempts from the Public Records Act records which would disclose information about a person's individual tax payment or status. With respect to the programs specifically listed in your request, Section 27-7-83(1) provides:

Returns and return information filed or furnished under the provisions of this chapter shall be confidential, and except in accordance with proper judicial order, as otherwise authorized by this section, as authorized in Section 27-4-3 or as authorized under Section 27-7-821, it shall be unlawful for the Commissioner of Revenue or any deputy, agent, clerk or other officer or employee of the Department of Revenue or the Mississippi Department of Information Technology Services, or any former employee thereof, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required...

* * *

Further, Section 27-7-83(9) provides:

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General, or any other attorney representing the state, of the report or return of any taxpayer who shall bring action to set aside the tax thereon, or against whom any action or proceeding has been instituted to recover any tax or penalty imposed.

* * *

The Mississippi Supreme Court has held "there is to be a liberal construction of the general disclosure provisions of a public records act, whereas a standard of strict construction is to be applied to the exceptions to disclosure; (and) any doubt concerning disclosure should be resolved in favor of disclosure." *Miss. Dept. of Wildlife, Fisheries and Parks*, 740 So.2d 925, 936 (Miss. 1999). The above-cited statutory exemptions to the Public Records Act prohibit the release of an individual's tax return information filed with the Department in accordance with the Children's Promise Act. As you note in your request, these exemptions are not clearly extended to the charities who receive donations. Further, Section 27-7-83(9) specifically allows the publication of statistics.

According to your request, the data in question does not reveal information specific to the individual donor but merely an aggregate amount of money received by each charitable organization pursuant to the Children's Promise Act. Thus, it is the opinion of this office that

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the total contribution amounts to the individual charitable organizations are not exempt from disclosure under the Public Records Act.

If we may be of further service, please let us know.

Very truly yours,

LYNN FITCH, ATTORNEY GENERAL

By:



Beebe Garrard
Special Assistant Attorney General

OFFICIAL OPINION