



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2003

Ms. Jill Warren  
Bracewell & Patterson, L.L.P.  
111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043

OR2003-8135

Dear Ms. Warren:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190148.

Advocacy, Inc. ("Advocacy") received a request for information related to a former Advocacy employee. You assert that Advocacy is not a governmental body as defined by section 552.003 of the Government Code, and that Advocacy, therefore, is not required to respond to this request for information. Alternatively, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the former Advocacy employee. *See* Gov't Code § 552.304 (providing for submission of public comments).

You inform us that Advocacy is a nonprofit corporation funded by the United States Congress "to protect and advocate for the legal rights of people with disabilities in Texas." You further inform us that in Texas, Advocacy is the designated state protection and advocacy system ("P&A system") which, you state, was created by federal law.<sup>1</sup> You state that federal funds flow directly to Advocacy from the federal government for the general support of Advocacy's operation of the P&A system.

Under the Public Information Act (the "Act"), an entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under section 552.003(1)(A)(xii) of the Government Code. Public funds are defined as "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(A)(5). In Open Records Decision No. 509 (1988), this office concluded that a private nonprofit corporation established under the Job Training Partnership Act and supported by federal

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<sup>1</sup>*See* 42 U.S.C. §§ 10801 – 1085 (known as The Protection and Advocacy for Mentally Ill Individuals Act, or "PAMII Act"), *id.* §§ 15041 – 15045 (known as The Developmental Disabilities Assistance and Bill of Rights Act, or "DD Act").

funds appropriated by the state was a governmental body for the purposes of the Act. In that case, we analyzed the state's role under the federal statute and concluded the state acted as more than a simple conduit for federal funds, in part because of the layers of decision-making and oversight provided by the state in administering the programs. *Id.* at 2. The decision noted that federal funds were initially distributed to the state and then allocated among the programs at issue. Citing Attorney General Opinions JM-716 (1987) and H-777 (1976), the decision observed that federal funds granted to a state are often treated as the public funds of the state. Furthermore, in Open Records Decision No. 563 (1990), this office held that “[f]ederal funds deposited in the state treasury become state funds.” *Id.* at 5 (citing Attorney General Opinions JM-118 (1983); C-530 (1965)).

With respect to your receipt of federal funds, you state the following:

The federal DD Act created the Developmental Disabilities Council (“DD Council”) for the primary purpose of granting federal money to disability-related organizations. *See* 42 U.S.C. 15021 *et seq.* Section 15024 of the DD Act requires that each state establish and maintain a DD Council supported by a designated state agency. In Texas, the designated state agency is the Texas Rehabilitation Commission (“TRC”). Members of the DD Council are appointed by the Governor and are responsible for, among other things, directing the expenditure of the federal funds for grants, contracts, and interagency agreements. *See* 42 U.S.C. § 15025(c)(8)(C).

Advocacy's grant from the DD Council is targeted to fund Advocacy's Community Integration Project. Advocacy is allowed to use the DD Council Grant to employ staff for the Community Integration Project and to administer the project. . . .

You also state in subsequent correspondence with this office that

the DD Council is a federal body created by federal law. The DD Council designs and administers the grant programs for dispensing federal funding for disability-related organizations in Texas, such as Advocacy, Inc. As the federal statute states, the DD Council, through its programs, directs the expenditure of federal funds to programs, such the Advocacy's Community Integration Project [sic].

You further state that the TRC is merely a conduit for federal funds. *See* 42 U.S.C. § 15025(d)(3)(B-G) (designated state agency shall receive, account for, and disburse funds under this part based on State plan required in section 15024 of this title, and provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, funds paid under this part). You assert that the TRC has no decision-making or oversight role in the distribution of federal funds to Advocacy. Finally, you state that Advocacy paid five percent of the named former employee's salary with DD Council Grant funds since she had a role in administering the Community

Integration Project as Advocacy's Chief Financial Officer. You state that the balance of the former employee's salary was paid from federal grants that Advocacy received directly from the DD Act, the PAMII Act, and other direct federal sources.

You also state that Advocacy receives funding from the Basic Civil Legal Services, the Interest on Lawyer's Trust Account, and the Crime Victims Civil Legal Services state programs. You inform us, however, that these funds are specifically targeted for civil legal assistance for Advocacy's beneficiaries and cannot be used for the general support of Advocacy. Finally, you state that "[n]o part of [the named former employee's] salary was paid from these funds, [the named former employee] did not perform any services pursuant to these programs, and Advocacy has no documents that would be responsive to the open records request pertaining to the legal services programs and [the named former employee.]"

Based on your representation that the DD Council only directs the expenditure of federal funds, we find that the DD Council has no decision-making or oversight role in the distribution of federal funds to Advocacy. Because Advocacy receives only federal funds in carrying out its duties and responsibilities under the DD Act and PAMII Act, Advocacy is not a governmental body subject to the Act. *See, e.g.*, Open Records Decision Nos. 602 (portion of Dallas Museum of Art not supported by public funds not governmental body), 510 (1988) (finding that although tuition equalization grant funds are properly characterized as public funds, they do not vest in university, which is simply conduit to pass funds on to students; once students receive funds, they become students' funds so long as students expend them in accordance with requirements of tuition equalization grant program), *see also B.H. Belo Corp. v. Southern Methodist Univ.*, 734 S.W.2d 720 (Tex. App.-Dallas 1987, writ denied) (finding that funds distributed by Southwest Conference to private university members were not public funds, thus private universities were not governmental bodies). Therefore, Advocacy is not required to respond to the present request for information. Because we reach this conclusion, we need not address your alternatively claimed exceptions.<sup>2</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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<sup>2</sup>This ruling does not address whether Advocacy is a governmental body with respect to the funding it receives from the Basic Civil Legal Services, the Interest on Lawyer's Trust Account, and the Crime Victims Civil Legal Services state programs.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 190148

Enc. Submitted documents

c: Mr. John C. McLemore  
8400 Cornerwood Drive  
Austin, Texas 78717  
(w/o enclosures)