



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2004

Ms. Dean C. Myane
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P.O. Box 787
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OR2004-5814

Dear Ms. Myane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205045.

The Hill Country Children's Advocacy Center (the "CAC"), which you represent, received a request for a specified statistical report; several categories of information related to CAC volunteers, board members, staff, and advisory board members; various information related to children served by the CAC; communications involving judges; minutes of all meetings; and all newsletters. You state that some of the requested information has been made available to the requestor. You also state that the CAC does not maintain some of the requested information.¹ You claim that the CAC's advisory board is not a governmental body subject to the Act. You claim that other portions of the requested information are excepted from disclosure under section 552.101 of the Government Code.² We have

¹We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

²We note that in your letter dated May 7, 2004, you also claimed sections 552.117, 552.119, and 552.1235 as exceptions to disclosure. However, you did not submit arguments explaining how these exceptions apply to the submitted information. Therefore, we assume you no longer assert these exceptions to disclosure. See Gov't Code §§ 552.301, .302.

considered your arguments and reviewed the submitted representative sample of information.³

First, we address your contention that the advisory board is not subject to the Act. The Act requires “governmental bodies” to make public, with certain exceptions, information in their possession. Section 552.003 of the Government Code defines “governmental body,” in part, as “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.” Gov’t Code § 552.003(1)(A)(xii). Courts, as well as this office, have previously considered the scope of the Act’s definition of “governmental body.” For example, in *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), an appellate court examined the financial relationship between Texas public universities and the National Collegiate Athletic Association (“NCAA”) to determine whether the NCAA was a governmental body within the statutory predecessor to section 552.003(1)(A)(xii). The *Kneeland* court noted that the attorney general’s opinions generally examine the facts of the relationship between the private entity and the governmental body.

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 at 2 (1987), *quoting* Open Records Decision No. 228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” *Id.* at 3. Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide “services traditionally provided by governmental bodies.” *Id.*

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 “funds of the state or of a governmental subdivision of the state.” Gov’t Code § 552.003(5). In Open Records Decision No. 509 (1988), this office concluded that a private nonprofit corporation established under the federal Job Training Partnership Act and supported by federal funds appropriated by the state was a governmental body for the

³We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. ORD 509 at 2. The decision noted that federal funds were initially distributed to the state and then allocated among the programs at issue. *Id.* 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. *Id.* at 3. Furthermore, in Open Records Decision No. 563 (1990), this office held that "[f]ederal funds deposited in the state treasury become state funds." ORD 563 at 5 (citing Attorney General Opinions JM-118 (1983); C-530 (1965)).

You state that the CAC is a governmental body subject to the Act. However, you contend that the CAC's advisory board is not a governmental body subject to the Act. If only a distinct part of an entity is supported by public funds within the meaning of section 552.003(1)(A)(xii) of the Government Code, only the records relating to that part supported by public funds are subject to the Act, and records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992) (only records of those portions of Dallas Museum of Art directly supported by public funds are subject to Act). You state that the "advisory board portion of the [CAC] receives no public funds." You further state that "there exists no nexus between . . . the advisory board . . . and the receipt or expenditures of public funds." Finally, you inform this office that the advisory board is an "unstructured, informal group of volunteers that do not hold regular meetings and do not keep minutes." Accordingly, after reviewing your arguments and representations, we agree that the advisory board portion of the CAC is not a governmental body subject to the Act.

Next, we address your argument that the references to volunteers within the submitted documents should be redacted to protect the privacy of the volunteers. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with the First Amendment to the United States Constitution. In the opinion *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court determined that the First Amendment right to freedom of association could protect an advocacy organization's list of contributors from compelled disclosure through a discovery request in pending litigation. In reaching this conclusion, the court stated:

Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Compelled disclosure of the identities of an organization's members or contributors may have a chilling effect on the organization's contributors as well as on the organization's own activity. *See Buckley v. Valeo*, 424 U.S.

1, 66-68, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). For this reason, the First Amendment requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs. *Tilton*, 869 S.W.2d at 956 (citing *NAACP*, 357 U.S. at 462-63, 78 S.Ct. 1163). “[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” *Id.*

Bay Area Citizens, 982 S.W.2d at 375-76 (footnote omitted). The court held that the party resisting disclosure bears the initial burden of making a *prima facie* showing that disclosure will burden First Amendment rights but noted that “the burden must be light.” *Id.* at 376. Quoting the United State Supreme Court’s decision in *Buckley v. Valeo*, 424 U.S. 1, 74 (1976), the Texas court determined that the party resisting disclosure must show “a reasonable probability that the compelled disclosure of a party’s contributors’ names will subject them to threats, harassment, or reprisals from either Government officials or private parties.” *Id.* Such proof may include “specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself.” *Id.*

You argue that, in this instance, the CAC has made the requisite *prima facie* showing to this office. Considering the representations made to this office, the submitted supporting information, and the totality of the circumstances, we agree that you have made a *prima facie* showing that disclosure of the identities of contributors to the CAC in this instance will burden First Amendment rights of freedom of association. We believe the term “contributor” encompasses both the identities of those individuals and corporations who make financial donations to the CAC and volunteers who donate their time and services to the CAC. Therefore, to the extent that the submitted information identifies contributors to the CAC, it must be withheld under section 552.101 pursuant to the right of association, unless the contributors have waived their right of association. We emphasize that the information must be withheld under section 552.101 only to the extent reasonable and necessary to protect the identity of the contributor. We note, however, that *Bay Area Citizens* does not make confidential information pertaining to the donations themselves, such as the amount donated or types of donations. *See* 982 S.W.2d at 376-77 (only names of contributors were at issue). To the extent the requested information does not identify a contributor to the CAC, it must be released.⁴

Finally, you assert that references to fund-raising activities are excepted under section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code. Section 264.408 of the Family Code provides in part:

⁴Because our ruling on this issue is dispositive, we do not address your remaining arguments for withholding the volunteers’ identities.

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this chapter. Disclosure may be to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

Fam. Code § 264.408(a). Thus, section 264.408 provides that certain information used or developed in providing services under chapter 264 of the Family Code, which concerns child welfare services, is confidential. Section 264.408 also explicitly provides for circumstances in which such confidential information may be disclosed. *See* Fam. Code § 264.408(a)(1), (2). We understand that the CAC is established pursuant to chapter 264 of the Family Code. However, we are unable to conclude that any of the submitted information pertaining to fund-raising activities constitutes information used or developed in providing services under chapter 264 of the Family Code. Accordingly, the CAC may not withhold any of the remaining information under section 552.101 in conjunction with section 264.408 of the Family Code.

In summary, we conclude that the advisory board is not a governmental body subject to the Act. We also conclude that to the extent the submitted information identifies contributors to the CAC, it must be withheld under section 552.101 pursuant to the right of association, unless the contributors have waived their right of association. The remaining information must be released.

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 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/seg

Ref: ID# 205045

Enc. Submitted documents

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(w/o enclosures)