ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2006

Mr. Marcus W. Norris
City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2006-07935

Dear Mr. Norris:

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# 254684.

The City of Amarillo (the "city") received a request for five categories of information relating to the Amarillo Globe News Center for Performing Arts, Inc. (The "Center"). You state that you have released a portion of the information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. You also indicate that some the requested information may be subject to third party privacy interests. Thus, pursuant to section 552.305 of the Government Code, you have notified the Center of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). This office has received correspondence from the Center. The city has submitted the remaining requested information for our review. We have considered the arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

First, you indicate that the submitted information is not public information subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. "Public information" is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

> (1) by a governmental body; or
>
> (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). In this instance, the submitted information consists of supporting documentation related to the Center's financial status which was utilized during contract negotiations between the city and the Center. Thus, we conclude that the submitted information was collected and is physically maintained by the city in connection with the transaction of official business. Therefore, the submitted information constitutes public information of the city under section 552.002. Consequently, the city may only withhold this information from the requestor if it is excepted from disclosure pursuant to a provision of chapter 552 of the Government Code. Thus, we will address your claimed exceptions for the submitted information. *See* Gov't Code § 552.002.

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 section encompasses common law privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The common law right to privacy encompasses personal financial information not relating to a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note, however, that common law privacy protects the interests of individuals, not those of corporations or other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy).

In this instance, the information pertains to the financial transactions between donors and the Center, a non-profit foundation. You assert that the submitted donation list, which contains the names of foundations, businesses, and individuals with the dollar amounts they pledged

and have given to the Center, is protected by section 552.101 in conjunction with common law privacy. Upon review, we find that the information relating to corporations or other types of business organizations are not protected by common law privacy and may not be withheld on that basis. The Center informs us that some of the individual donors gave permission to the release of their names as donors, but not to the exact amount of their contributions to the Center. Therefore, to the extent that any individuals gave permission to release their names as donors, we conclude that the names are not confidential under common law privacy and may not be withheld on that basis. To the extent that the individuals at issue have not consented to the release of their identities as contributors, the names are private and must be withheld under section 552.101. However, the amount of money pledged or contributed by these individuals to the Center constitutes a personal financial transaction with the Center that is protected under common law privacy. We have marked the information that is protected from disclosure by the common law right to privacy under section 552.101. The remaining information is not private and may not be withheld under section 552.101 on that basis.

Next, the city contends that revealing the remaining donors' names would violate their First Amendment rights to freedom of speech and association. The First Amendment guarantees the freedom of association for the purpose of advancing ideas and airing grievances. U.S. CONST. AMEND. I; *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). The party asserting the right of association bears the initial burden of making a *prima facie* showing of harm to its First Amendment right. *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 376 (Tex. 1998). Such a burden is a light one. *Id.* The party "need show only 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." *Buckley v. Valeo*, 424 U.S. 1, 74 (1976). Such proof includes "specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself." *Id.*

Here, the city's argument is that "[t]here will be a great chilling effect on private philanthropy for all manner of private foundations and faith-based organizations, if a subsequent contract by the organization with a governmental agency suddenly renders the private donation records of the foundation open to newspaper publication." Upon review, the city has not offered any specific evidence of past or present harassment of its donors due to their associational ties with the Center. Thus the city has failed to demonstrate how any portion of the remaining information is protected under the right of association.

In addition, the city contends that release of the remaining information would infringe upon these donor's First Amendment rights to freedom of speech. However, the city does not explain how any portion of the remaining submitted information is protected under the First Amendment right to freedom of speech. Therefore, none of the remaining information may be withheld on this basis.

In summary, to the extent the individuals at issue have not consented to the release of their identity as contributors, the names are private and must be withheld under common law privacy in conjunction with section 552.101. Furthermore, the information we have marked must be withheld under section 552.101 in conjunction with common law privacy. The remaining information must be released to the requestor.

The city requests a previous determination. We decline to issue a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; and 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/ir

Ref: ID# 254684

Enc. Submitted documents

c: Mr. George Schwarz
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