



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2007

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st Floor
Conro, Texas 77301

OR2007-01800

Dear Mr. Walker:

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# 271111.

The Montgomery County Memorial Library System (the "system") received a request for four categories of information related to its Reconsideration Committee ("committee"). You state that you will release "requests for reconsideration" responsive to category one of the request and the committee members names responsive to a portion of category three. You state that you have no information responsive to categories two and four.¹ You claim that the committee members' addresses and telephone numbers are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

The requestor seeks in part the names, home addresses, and home telephone numbers of all members of the committee. Although you have released the names of the members, you seek to withhold the addresses and telephone numbers of the appointed members of the committee. You assert that if the appointed members' addresses and telephone numbers are released, then the committee members would be subjected to unwarranted harassment and abuse. Thus, you assert the addresses and telephone numbers are excepted from disclosure

¹ We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

under section 552.101 of the Government Code in conjunction with the First Amendment freedom of association.² The First Amendment freedom of association protects the rights of people to associate together and to advocate and promote legitimate, albeit controversial, political, social, economic action. U.S. Const. amend. I; *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). In support of your argument, you cite us to several cases discussing the right of association. See *Buckley v. Valeo*, 424 U.S. 1 (1976); *NAACP v. Alabama*, 357 U.S. at 460 (1958); *Pollard v. Roberts*, 283 F. Supp. 248 (E.D. Ark. 1968); *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998). These cases stand for the proposition that a private organization or association may seek to withhold the identities of its members if release of the members' identities may provoke reprisals from those opposed to a group. The rationale behind this policy is that reprisal or the fear of reprisal may discourage an individual from exercising their Constitutional rights as well as interfering with the group's own activity. *Buckley* 424 U.S. at 66-68.

We note that in each of the cases you have cited the organizations or associations at issue were private groups. The committee at issue addresses public concerns in relation to literary material available through the system library. The requestor has submitted information that demonstrates that the committee is made up of four to five system personnel and that, when a request for consideration involves the children or young adult section, a panel of five citizens chosen by the commissioner's court is included in the review process. Thus, the committee is not a private association or organization of individuals advancing ideas or airing grievances for the purposes of the First Amendment. Rather, it is a committee that advises the system on matters of public concern brought before it. Thus, we find that you have failed to demonstrate that the freedom of association guaranteed by the First Amendment is applicable to the home addresses and home telephone numbers at issue. Accordingly, you must release the addresses and telephone numbers to the requestor.

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).

² 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.

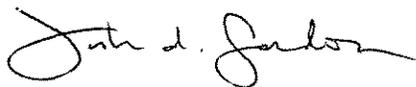
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 271111

Enc. Submitted documents

c: Mr. Jim Jenkins
20519 Sunshine Lane
Spring, Texas 77388
(w/o enclosures)