



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 21, 2007

Ms. Cathie Childs  
Assistant City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767

OR2007-16941

Dear Ms. Childs:

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 #298196.

The Austin Police Department (the "department") received a request for "all accounting records and income tax filings for the Office of Community Liaisons 501-C3 and for Operation Blue Santa." You state that you have released some responsive information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We must first address the department's procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). You state that the department received the present request on October 2, 2007, but the envelope in which the department's request for a ruling was submitted to this office bears a postmark date of October 18, 2007. *See id.* § 552.308(b) (prescribing standards for

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<sup>1</sup>We 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.

timeliness of action by United States or interagency mail or common or contract carrier). Thus, the department failed to request a ruling by the ten business-day deadline prescribed by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.101 of the Government Code can provide a compelling reason to withhold information; accordingly, we will address your arguments under this section.

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 information that another statute makes confidential. Although you assert that the submitted federal tax Form 990s should be withheld in their entirety, we note that only portions of these forms are confidential under federal law. Federal tax returns and tax return information are confidential under section 6103 of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a); *see also id.* § 6104(b)(1)-(2) (defining "return" and "return information"). Section 6104 of title 26 provides in relevant part as follows:

(b) Inspection of annual information returns. The information required to be furnished by section [ ] 6033 . . . shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a) or a political organization exempt from taxation under section 527) which is required to furnish such information . . . .

...

(d) Public inspection of certain annual returns[.]

(1) In general. In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a)

(A) a copy of

(i) the annual return filed under section 6033 . . . by such organization,

...

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .

(B) upon request of an individual made at such principal office . . . a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

...

(3) Exceptions from disclosure requirement. -

(A) Nondisclosure of contributors, etc. - In the case of an organization which is not a private foundation (within the meaning of section 509(a)) or a political organization exempt from taxation under section 527, paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization . . . .

*Id.* The submitted Form 990s are subject to public disclosure pursuant to section 6104 of title 26 of the United States Code. Assuming that none of the contributors listed in the submitted Form 990 is a private foundation or political organization that is excluded from the scope of subsections (b) and (d) of section 6104, we conclude that the names of contributors that we have marked must be withheld from disclosure under section 552.101 of the Government Code in conjunction with sections 6103 and 6104 of title 26 of the United States Code. *See also Stanbury Law Firm, P.A. v. Internal Revenue Service*, 221 F.3d 1059 (8th Cir. 2000). No other information may be withheld on this basis.

Next, the department contends that revealing the names of those who contribute to the Operation Blue Santa would violate their First Amendment rights to freedom of association. Thus, the department asserts these names are excepted from disclosure under section 552.101 of the Government Code in conjunction with the First Amendment right to freedom of 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.*

The department has submitted for review “accounting records” pertaining to the non-profit organizations at issue. Although the department generally states that information identifying contributors to these non-profit organizations should be withheld from disclosure, it has not offered any specific evidence of past or present harassment of these programs’ contributors due to their associational ties with the department or its charitable programs. Rather, the department’s assertions are entirely conclusory. Accordingly, we conclude that the department may not withhold the names of these programs’ contributors under the right of association. As you raise no further exceptions regarding this information, it must be released to the requestor.

We note that the submitted documents include information subject to section 552.137. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137 (a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You also do not inform us that the relevant members of the public have consented to the release of these e-mail addresses. Accordingly, we have marked the e-mail addresses that the department must withhold under section 552.137 of the Government Code.

In summary, the department must release the Form 990s at issue under federal law. However, the department must withhold the names of the contributors, which we have marked, that are listed on these forms. Unless it received consent from their owners, the department must also withhold the e-mail addresses we have marked under section 552.137. The department must release the remaining information 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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 298196

Enc. Submitted documents

c: Mr. Tony Plohetski  
Austin American Statesman  
c/o Cathie Childs  
Assistant City Attorney  
City of Austin  
P. O. Box 1088  
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(w/o enclosures)