



April 3, 2002

Mr. Richard L. Muller, Jr.  
Vinson & Elkins, L.L.P.  
1001 Fanin Street, Suite 2300  
Houston, Texas 77002-6760

OR2002-1627

Dear Mr. Muller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161120.

Fort Bend Child Advocates, Inc. d/b/a Child Advocates of Fort Bend County (“Child Advocates”), which you represent, received a request for all files and documents concerning the requestor held by the Court Appointed Special Advocate program (“CASA”) of Child Advocates. You make three alternative arguments for withholding the requested information: first, you claim that the Family Code provides an independent framework for the disclosure of the type of information at issue here, and that consequently, the Public Information Act (the “Act”) does not apply to the requested information; second, that Child Advocates is not a governmental body subject to the Act; and third, that the requested information is confidential by law and therefore it is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

We will first address your argument that Child Advocates is not a governmental body subject to the Act. In making your argument, you incorporate by reference the arguments made to this office in support of this same position in connection with an earlier ruling: Open Records Letter No. OR2000-4845 (2000).<sup>1</sup> In that ruling, this office reaffirmed its prior conclusion in Open Records Letter No. OR2000-3459 (2000) that two of the programs of

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<sup>1</sup>We note your assertion that this office previously ruled in Open Records Letter No. OR2000-1997 (2000) on the issue of whether Child Advocates is a governmental body. In fact, the previous rulings that addressed this issue are Open Records Letter Nos. 2000-4845 (2000) and 2000-3459 (2000).

Child Advocates - Child Advocacy Center and CASA - meet the definition of governmental bodies for purposes of the Act. As you assert the same arguments previously made, we again reaffirm our conclusion that Child Advocacy Center and CASA are governmental bodies for purposes of the Act.

We next address your argument that the Family Code provides an independent framework for the disclosure of the type of information at issue here, and that consequently, the Act does not apply to the requested information. We disagree. The Act applies to "public information." See Gov't Code § 552.021. Section 552.002 of the Government Code defines public information 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." Upon review of the information at issue, a CASA case file, we believe it is clear that the requested information is public information subject to the Act. Thus, if CASA, as a governmental body for purposes of the Act, wishes to withhold such information from a requestor, it is required to follow the procedures set forth in section 552.301 of the Government Code.<sup>2</sup> See Gov't Code § 552.301(a). You have done so in this instance, and argue that the requested information is excepted under section 552.101 of the Government Code in conjunction with two provisions of the Family Code. We will thus address your argument under section 552.101.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 264.613 of the Family Code pertains to children's advocacy services and provides:

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

(b) Information described by Subsection (a) may be disclosed to:

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

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<sup>2</sup>We note that a governmental body may withhold information without the necessity of requesting a decision from this office if it has a "previous determination." See Open Records Decision No. 673 (2001) (defining previous determination). In regard to future requests for the type of information at issue, CASA may wish to request a previous determination at the time CASA requests a ruling from this office under section 552.301.

(2) the attorney for the child who is the subject of the information;  
and

(3) eligible children's advocacy centers.

(c) Information related to the investigation of a report of abuse or neglect of a child under Chapter 261 and services provided as a result of the investigation are confidential as provided by Section 261.201.

You state that “[o]n December 7, 2001, Child Advocates was appointed as a Court Appointed Special Advocate for [a named child] in Cause No. 121,938 in the 328<sup>th</sup> District Court, in which the Department of Child Protective Services alleged the Requestor was guilty of neglect of [the named child]. The appointment was made pursuant to Subchapter G of Chapter 264 of the Texas Family Code. The requested information is the CASA file prepared and compiled pursuant to that appointment. . . .” It is apparent that the requestor is not one of the individuals or entities granted a right of access to the information under section 264.613(b). Accordingly, on the basis of your assertion, and upon our review of the submitted information, we conclude that the submitted information is confidential in its entirety under section 264.613(a) of the Family Code, and therefore, it must be withheld from disclosure under section 552.101 of the Government Code.

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 Department of Public 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 161120

Enc. Submitted documents

c: Ms. Tiffany Hernandez  
Family Advocates of Fort Bend County  
2205 Avenue I #117  
Rosenberg, Texas 77471  
(w/o enclosures)