



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2004

Mr. Michael Tucker
Chief Executive Officer
Collin County Children's Advocacy Center
2205 Los Rios Boulevard
Plano, Texas 75074-3422

OR2004-5800

Dear Mr. Tucker:

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# 205044.

The Collin County Children's Advocacy Center (the "center") received a request for eight categories of information, including lists of volunteers and board members, social economic information, quarterly reports, minutes of meetings and newsletters for the center. You state that the center has no information responsive to a portion of the request.¹ You claim that the remaining requested information, or portions thereof, is not "public information" subject to the disclosure requirements of the Act. Alternatively, you claim that portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted sample of information.²

Initially, you contend that the center is not a "governmental body" as defined in section 552.003 of the Act, and that the requested information does not therefore

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. - San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² 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.

constitute “public information” subject to disclosure. You describe the center as a nonprofit corporation which receives grants from governmental agencies. 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)(x) of the Government Code (“[g]overnmental body’ . . . means . . . 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.”). Public funds are “funds of the state or of a governmental subdivision of the state.” Gov’t Code § 552.003(5).

However, the Act does not apply to private persons or businesses simply because they provide goods or services under a contract with a governmental body. Open Records Decision No. 1 (1973). An entity that receives public funds in exchange for services as would be expected in a typical arms-length contract between a vendor and purchaser is not a governmental body. Attorney General Opinion JM-821 (1987); Open Records Decision No. 228 at 2 (1979). If, however, a governmental body makes an unrestricted grant of funds to a private entity to use for its general support, the private entity is a governmental body subject to the Act. *Id.* If a distinct part of an entity is supported by public funds within section 552.003(1)(A)(x) of the Government Code, the records relating to that part or section of the entity are subject to the Act, but records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992).

In *Kneeland v. Nat’l Collegiate Athletic Ass’n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses “governmental bodies” subject to the Act “‘simply because [the persons or businesses] provide specific goods or services under a contract with a government body.’” *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, 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 and apply three distinct patterns of analysis:

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 (1987), *quoting* ORD-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.’” 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. You have submitted contracts that show that the center receives and expends public funds. Having examined your arguments and the information submitted for our review, we conclude that the center is supported in whole or in part by public funds, including funds received from the Criminal Justice Division of the Office of the Governor. In addition, although you state that the grants received are not “unrestricted,” but impose “specific and definite obligations to provide a measurable amount of service,” the submitted contracts indicate that grant funds are used for the general support of the center. *See* Open Records Decision Nos. 621 at 5 (1993) (finding Arlington Economic Development Foundation to be governmental body when agreement with city indicates city was providing general support for foundation), 302 (1982) (finding Brazos County Industrial Foundation to be governmental body when it receives unrestricted grant from city); Attorney General Opinion JM-821 (1987) (receipt of public funds for general support of activities of private organization brings that organization within definition of “governmental body”). Accordingly, we conclude that the center is a governmental body for purposes of the Act.

We now turn to your arguments regarding the submitted information. Section 552.101 exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses not only information protected by statute but also information made confidential by constitutional law or by judicial decision. 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.*

Considering the representations made to this office, the supporting information submitted, and the totality of the circumstances, we find that you have made a *prima facie* showing that disclosure of the identities of contributors to the center in this instance will burden First Amendment rights of freedom of association. We believe the term “contributor” encompasses both the identities of those individuals who make financial donations to the center, and volunteers who donate their time and services to the center. *Id.* Therefore, to the extent that the submitted information identifies volunteers of or contributors to the center, it must be withheld under section 552.101 pursuant to the right of association, unless the volunteers or contributors have waived their right of association. The remaining responsive information must be released 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).

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

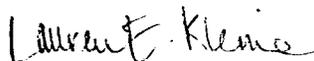
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 205044

Enc. Submitted documents

c: Mr. Gary W. Gates
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(w/o enclosures)