



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2004

Ms. Jennifer H. Davidow
Vinson & Elkins L.L.P.
2300 First City Tower
1001 Fannin Street
Houston, Texas 77002-6760

OR2004-5815

Dear Ms. Davidow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205050.

Fort Bend County Child Advocates, Inc. ("Child Advocates") received a request for identical information related to Child Advocates that is found in the "Texas CASA Statistical Report" since January 1, 2002, as well as seven categories of information related to the following: volunteers, board members, staff, and advisory board members of Child Advocates; children served by Child Advocates; certain communications; minutes of all meetings; and newsletters. You state that Child Advocates has made some of the requested information available to the requestor. You also state that Child Advocates does not have information responsive to some of the categories of requested information.¹ Finally, you claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note that the Public Information Act ("Act") does not require Child Advocates to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, you note that Child Advocates has previously received a similar request for one of the categories of information, regarding certain communications, in which you requested an opinion from this office. In response, this office issued Open Records Letter No. 2004-5796 (2004). We understand that the law, facts, and circumstances on which the prior ruling was based have not changed. Therefore, in regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that you may continue to rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In regard to the submitted information that is not subject to our previous ruling, we note that section 552.022 of the Government Code makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Section 552.022 states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

One such category of expressly public information under section 552.022 is “the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]” Gov’t Code § 552.022(a)(2). Exhibits B and C include the name, sex, and ethnicity of employees and officers of Child Advocates. As prescribed by section 552.022, this information must be released to the requestor unless it is confidential under other law. Section 552.103, which serves to protect a governmental body’s position in litigation, is a discretionary exception and does not provide a compelling reason to overcome the presumption of openness. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103), 522 at 4 (1989) (discretionary exceptions in general). Therefore, you may not withhold Exhibits B and C under section 552.103. As you make no additional arguments to withhold the information in Exhibit C, this information must be released. In regard to Exhibit B, you also assert section 552.101 of the Government Code, which constitutes other law for purposes of section 552.022. Thus, we will address your claim under this exception for the information in Exhibit B.

First, however, we will address your claim under section 552.103 of the Government Code for the submitted information that is not subject to section 552.022, Exhibit A. Section 552.103 provides as follows:

of the Child Advocates governing board. *See generally* Gov't Code § 552.022(a)(2). Consequently, Child Advocates may not withhold the identifying information of its board members on this basis, and thus, the information in Exhibit B must be released.

In summary, we conclude that: 1) Child Advocates may continue to rely on Open Records Letter No. 2004-5796 as a previous determination; and 2) Child Advocates may withhold Exhibit A pursuant to section 552.103 of the Government Code. Exhibits B and C must be released.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 205050

Enc: Submitted documents

c: Mr. Gary W. Gates, Jr.
2205 Avenue I #117
Rosenberg, Texas 77471
(w/o enclosures)