ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2004

Ms. Michelle Wells
Executive Director
CASA in the Heart of Texas
P.O. Box 2326
Brownwood, Texas 76804

OR2004-5818

Dear Ms. Wells:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205040.

CASA in the Heart of Texas, Inc. ("CASA") received a request for a specified statistical report; several categories of information related to CASA volunteers, board members, staff, and advisory board members; various information related to children served by CASA; certain communications with judges; minutes of all meetings; and all newsletters. You state that some of the responsive information has been released. You claim, however, that portions of the remaining records are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the submitted sample records.[1]

Initially, you claim that the CASA Advisory Board (the "Advisory Board") and the Friends of CASA ("FOCASA") are not governmental bodies and are thus not subject to the Public Information Act (the "Act"). *See* Gov't Code § 552.003(1)(A); *see also* Open Records Decision No. 602 (1992). CASA is a governmental body; however, an organization is not necessarily a "governmental body" in its entirety. The Act provides that only "[t]he 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" is a governmental body. Gov't Code § 552.003(1)(A)(xii); *see also* Open Records Decision No. 602 (1992)

[1]We assume that the 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.

(concluding that only records of those portions of Dallas Museum of Art that were directly supported by public funds are subject to Act). You state that CASA does not contribute funds to the Advisory Board or FOCASA and that those entities are not otherwise supported by public funds. Based on these assertions, we conclude that the Advisory Board and FOCASA do not fall within the definition of a governmental body under the Act. *See* Gov't Code § 552.003(1)(A)(xii). Accordingly, information concerning the Advisory Board and FOCASA need not be released

We will now address your arguments for the information that is subject to the Act. 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 other statutes make confidential. You claim that the identities of the CASA volunteers are excepted from disclosure pursuant to section 264.610 of the Family Code, which provides that "[t]he attorney general may not disclose information gained through reports, collected case data, or inspections that would identify a person working at or receiving services from a volunteer advocate program." Fam. Code § 264.610. The information at issue is not contained in reports or other materials collected by the attorney general as part of its statutory duties under chapter 264 of the Family Code. Rather, this information was created by CASA for its own purposes. Accordingly, we find that section 264.610 of the Family Code is not applicable to the requested records. *See generally* Open Records Decision Nos. 658 (1998), 478 (1987) (stating that statutory confidentiality must be express and will not be implied from statutory scheme).

You also claim that the identities of the donors, volunteers, contributors, and board members of CASA are excepted from disclosure under section 552.101 of the Government Code in conjunction with the First Amendment to the United States Constitution. 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, and the totality of the circumstances, we agree that you have made a *prima facie* showing that disclosure of the identities of contributors to CASA in this instance will burden their First Amendment rights to freedom of association. Furthermore, we find that the term "contributor" encompasses both the identities of those corporations and individuals who make financial donations to CASA, and volunteers who donate their time and services to CASA. *Id.* We note, however, that the term "contributor" does not encompass members of CASA's governing board. *See generally* Gov't Code § 552.022(a)(2). In addition, the right of association does not make confidential information pertaining to the donations themselves, such as the amount donated or types of donations. *See Bay Area Citizens*, 982 S.W.2d at 376-77 (only names of contributors were at issue). We have marked a sample of the types of information that must be withheld. The remaining information 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

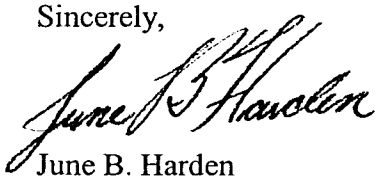
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 205040

Enc. Submitted documents

c: Mr. Gary W. Gates, Jr.
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Rosenberg, Texas 77471
(w/o enclosures)