



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 15, 2004

Mr. Brady Fisher  
Attorney at Law  
American Legion Building  
26 Northeast Second Street  
Paris, Texas 75460

OR2004-5855

Dear Mr. Fisher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205389.

CASA for Kids ("CASA"), which you represent, 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; communications with judges; minutes of all meetings; and all newsletters. You inform us that CASA has released some of the requested information. You claim that other responsive information is excepted from public disclosure under sections 552.101, 552.102, 552.103, 552.111, 552.117, and 552.135 of the Government Code. We have considered your arguments and have reviewed the information you submitted.

Initially, we address your reliance on Open Records Letter Nos. 2000-4845 (2000) and 2001-0771 (2001). These decisions were requested by and are addressed to, respectively, Fort Bend Child Advocates, Inc. d/b/a Child Advocates of Fort Bend County, and Fort Bend County Child Advocates Endowment, Inc. For purposes of the Public Information Act (the "Act"), chapter 552 of the Government Code, Open Records Letter Nos. 2000-4845 (2000) and 2001-0771 (2001) do not constitute previous determinations with regard to CASA for Kids. Therefore, CASA for Kids may not withhold any information that is responsive to this request on the basis of Open Records Letter No. 2000-4845 (2000) or Open Records Letter No. 2001-0771 (2001). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating elements of attorney general decisions that constitute previous determinations for purposes of Gov't Code § 552.301(a)).

You also contend that CASA "cannot disclose the names on [the submitted] documents because we have an employee non-disclosure form signed by our employees, volunteers and board members." You state that "[e]ach of these documents have used the names of these members." We note that information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. See Attorney General Opinion JM-672 (1987); Open Records Decision No. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the statutory predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."). Consequently, unless the rest of the responsive information comes within an exception to public disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Next, we address your obligations under section 552.301 of the Act. This section 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 that it claims 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). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. See *id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. See *id.* § 552.302.

You inform us that CASA received the present request for information on April 19, 2004. The date of your request for this decision, May 8, 2004, is not within the ten-business-day period prescribed by section 552.301(b). Furthermore, you have not submitted written comments explaining how or why your claimed exceptions to disclosure are applicable to the information at issue, as required by section 552.301(e)(1)(A). Therefore, the submitted information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information. See also *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.103 and 552.111 are

discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 subject to waiver), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 may be waived). Your claims under sections 552.103 and 552.111 do not constitute compelling reasons for non-disclosure under section 552.302. In failing to comply with section 552.301, you have waived these exceptions. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, you may not withhold any of the submitted information under sections 552.103 or 552.111. You also raise sections 552.101, 552.102, 552.117, and 552.135. These exceptions can provide compelling reasons for non-disclosure under section 552.302. Therefore, we will consider whether any of these exceptions are applicable in this instance.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by constitutional law or 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.*

We find that the disclosure of the identities of CASA’s contributors would burden First Amendment rights of freedom of association. We believe the term “contributor” encompasses both the identities of those individuals and corporations who make financial donations to CASA and volunteers who donate their time and services to CASA. However, we note that the term “contributor” does not encompass members of CASA’s governing board or staff. *See generally* Gov’t Code § 552.022(a)(2). In addition, *Bay Area Citizens* 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 the names of contributors were at issue). Therefore, to the extent that the submitted information relates to CASA’s contributors, you must withhold the information that identifies contributors, including volunteers serving on the advisory board, under section 552.101 pursuant to the right of association, unless the contributors have waived their right of association. We emphasize that the information must be withheld under section 552.101 only to the extent reasonable and necessary to protect the identity of the contributor.

Section 552.102(a) excepts “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” This exception is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee’s employment and its terms constitutes information relevant to person’s employment relationship and is part of employee’s personnel file). The privacy analysis under section 552.102(a) is the same as the test of common-law privacy under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.). Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common-law right to privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private). We conclude that none of the submitted information is excepted from disclosure under section 552.102(a).

Section 552.117(a)(1) excepts the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under

section 552.024. The determination of whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). A governmental body may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was received by the governmental body. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not make a timely election under section 552.024 to keep the information confidential.

It is not clear to this office that you would be required to withhold any of the submitted information under section 552.117(a)(1). Nevertheless, if the submitted documents contain a home address or telephone number, a social security number, or any family member information that a current or former official or employee of CASA timely elected under section 552.024 to keep confidential, then you must withhold any such information under section 552.117(a)(1).

You also raise section 552.135. This exception provides in part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a)-(b). By its plain language, section 552.135 applies only to information held by a school district. Thus, you may not withhold any of the submitted information under section 552.135.

We note that the submitted documents contain e-mail addresses. As amended by the 78<sup>th</sup> Legislature, section 552.137 provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

- (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
- (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
- (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137.<sup>1</sup> Section 552.137 excepts certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Section 552.137 is not applicable to the types of e-mail addresses listed in section 552.137(c) or to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked e-mail addresses that must be withheld under section 552.137, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure.

We also note that a small amount of the submitted information is protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of information that is copyrighted. *Id.* If a member of the public wishes to make copies of copyrighted materials, he or she must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of

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<sup>1</sup>This office will raise section 552.137 on behalf of a governmental body, as it is a mandatory exception that may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550 at 8-9 (1990).*

In summary: (1) any information that identifies CASA's contributors, including volunteers serving on the advisory board, must be withheld under section 552.101 pursuant to the right of association to the extent reasonable and necessary to protect the identities of contributors, unless the contributors have waived their right of association; (2) a home address or telephone number, a social security number, or any family member information that a current or former official or employee of CASA timely elected to keep confidential under section 552.024 must be withheld under section 552.117(a)(1); and (3) the marked e-mail addresses must be withheld under section 552.137, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure. With the exception of information that CASA must withhold under these sections, the submitted information must be released. In releasing the information that is protected by copyright, CASA must comply with copyright law.

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).

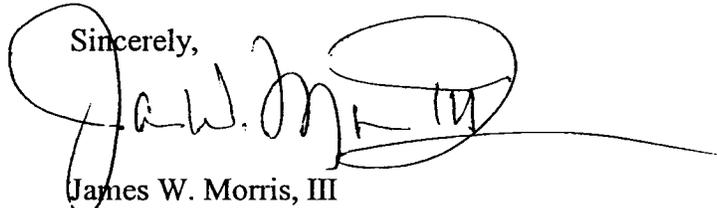
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 205389

Enc: Submitted documents

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