



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2004

Ms. Betty Dickerson  
Executive Director  
Midland Rape Crisis and Children's Advocacy Center  
P.O. Box 10081  
Midland, Texas 79702

OR2004-5912

Dear Ms. Dickerson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205303.

The Midland Rape Crisis and Children's Advocacy Center (the "center") received a request for identical information related to the center that is found in the "Texas CASA Statistical Report" since January 1, 2002, as well as eight categories of information related to the following: volunteers, board members, staff, advisory board members, and Multi-Disciplinary Team Members of the center; children served by the center; certain communications; minutes of all meetings; and newsletters. You state that the center has made much of the requested information available to the requestor. You also represent that the center does not have information responsive to some of the categories of requested information.<sup>1</sup> Finally, you claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>2</sup>

---

<sup>1</sup>We note that the Public Information Act ("Act") does not require the center 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).

<sup>2</sup>We note that a portion of the submitted information is not responsive to the request for information, and thus, we need not address the applicability of the Act to it.

Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information made confidential by constitutional law or judicial decision. We understand you to assert that information that would identify a volunteer or contributor to the center may be withheld under section 552.101 in conjunction with the holding of the Texas Supreme Court in *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998). In that decision, 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.*

Upon review of your arguments and the submitted information, we conclude that disclosure of the identities of contributors to the center in this instance will burden the 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. Therefore, the center must withhold the

identifying information of contributors to the center 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 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# 205303

Enc: Submitted documents

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