



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2004

Mr. Caesar Quintanilla
Executive Director
Court Appointed Special Advocates
CASA of Cameron and Willacy Counties, Inc.
847 East Harrison
Brownsville, Texas 78520

OR2004-6616

Dear Mr. Quintanilla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206517.

The Court Appointed Special Advocates of Cameron and Willacy Counties, Inc. ("CASA") received a request for seven categories of information concerning a specified period of time and pertaining to the "Texas CASA Statistical Report," "volunteers, board members, staff, advisory board members," certain "Social Economic Information," the "type of abuse alleged outside of actual court proceedings," certain communications, CASA meeting minutes, and CASA newsletters. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.101, 552.102, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.¹

Initially, we note that CASA did not submit any responsive information to us pertaining to items one through four and seven of the request for information. We, therefore, presume that

¹ 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.

CASA has already provided the requestor with this information to the extent that it existed on the date of CASA's receipt of this request. If not, then CASA must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301(b) requires that a governmental body ask the attorney general for a decision as to whether requested information must be disclosed and state the exceptions to disclosure that apply to the requested information not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). In addition, section 552.301(e) provides that a governmental body that requests a decision under section 552.301(a) must submit to us within fifteen business days of its receipt of the request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(a), (e). You state that CASA received the present request for information on April 30, 2004. Thus, CASA had until May 14, 2004 to request a decision from us as to whether the information at issue must be disclosed and until May 21, 2004 to submit the items required to be submitted to us under section 552.301(e). However, CASA did not request a decision or submit the items required to be submitted to us under section 552.301(e) until May 26, 2004. Thus, we find that CASA failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

Because CASA failed to comply with the procedural requirements of section 552.301, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). CASA must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although CASA claims that portions of the submitted information are excepted from disclosure pursuant to section 552.111 of the Government Code, we note that this exception to disclosure is a discretionary exception to disclosure under the Public Information Act (the "Act") that may be waived by CASA.² Accordingly,

² Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or which implicates the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental

we conclude that CASA may not withhold any portion of the submitted information under section 552.111 of the Government Code. However, since CASA also claims that portions of the submitted information are excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code, we will address these claims.

In addition, we note that section 552.022 of the Government Code makes certain information expressly public. 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.

Gov't Code § 552.022(a). One 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). The submitted information includes the names of employees and officers of CASA. As prescribed by section 552.022, this information must be released to the requestor, unless it is confidential under other law. Section 552.101 of the Government Code constitutes "other law" for purposes of section 552.022; therefore, we will address your claims under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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 the following:

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

body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); see also *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). Discretionary exceptions, therefore, do not generally constitute compelling interests that are sufficient to overcome the presumption that requested information is presumed public.

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.*

You indicate that CASA has, in this instance, made the requisite *prima facie* showing to this office. Considering your representations, the submitted 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 First Amendment rights of freedom of association. We believe that the term “contributor” encompasses the identities of both those individuals and corporations who make financial donations to CASA and volunteers who donate their time and services to CASA. We note that the term “contributor” does not encompass members of CASA’s governing board or officers or employees of CASA. 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). Accordingly, we conclude that CASA must withhold the information contained within the submitted information that identifies contributors under section 552.101 of the Government Code pursuant to the right of association, unless the contributors have waived their right of association.³

You also claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 264.610 of the Family Code. Section 264.610 provides that “[t]he attorney general

³ Because we base our ruling with regard to the identifying information of contributors that is contained within the submitted information on section 552.101 of the Government Code in conjunction with the right of association, we need not address your section 552.102 claim.

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. Section 264.610 applies only to information maintained by the Office of the Attorney General (the “attorney general”). The information at issue is not maintained by the attorney general. Accordingly, we conclude that CASA may not withhold any portion of the remaining submitted information under section 552.101 of the Government Code in conjunction with section 264.610 of the Family Code.

In summary, CASA must withhold the information contained within the submitted information that identifies contributors under section 552.101 of the Government Code pursuant to the right of association, unless the contributors have waived their right of association. CASA must release the remaining submitted information 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).

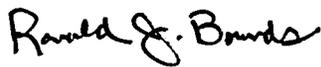
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 206517

Enc. Submitted documents

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