



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 25, 2008

Ms. Elaine B. Roberts  
Advocacy, Inc.  
Central Office- Legal Services Unit  
7800 Shoal Creek Blvd., Suite 171-E  
Austin, Texas 78757

OR2008-16203

Dear Mr. Roberts:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 327835.

Advocacy, Inc. ("Advocacy") received two requests from the same requestor. The first request seeks all e-mail correspondence between two named individuals for a specified time period, any and all invoices and billing records between Advocacy and Bracewell & Giuliani, L.L.P. ("Bracewell") for a specified time period, and a written document stating the dollar amount each financial contributor gave to Advocacy during a specified period.<sup>1</sup> The second request asks Advocacy to "state in writing" four categories of information pertaining to the staffing, nature, and disposition of "educational cases."<sup>2</sup>

With regard to the initial request, you have submitted to this office information responsive to the request for invoices and billing records. You have not submitted to this office, nor do you state you do not possess, a written document stating the dollar amount given by financial contributions to Advocacy.

You state that you do not possess information responsive to the request for e-mail correspondence. You assert with regard to the second request that "no documents exist which state this information and Advocacy should not be required to extract information from the 2128 educational files in order to prepare a written statement to comply with this

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<sup>1</sup>You state you sought and received clarification from the requestor regarding this request. *See* Gov't Code § 552.022(b) (governmental body may ask requestor to clarify or narrow request).

<sup>2</sup>We understand "educational cases" to concern Advocacy's funding of legal services to obtain private school placements for children with special needs.

request.” On that basis, you argue that Advocacy is not required to respond to the second request. In this regard, we note that the Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Accordingly, with regard to the second request, you further assert that, “to the extent that the requestor seeks access to Advocacy’s client files in order to ascertain or verify this information, Advocacy objects to producing confidential and privileged file information” due to the administrative inconvenience of complying with the request, and because release of such information would violate federal and state law.<sup>3</sup> You also assert generally that Advocacy is not a governmental body subject to the Act and, therefore, need not respond to the requests for information. Finally, in the alternative, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered your arguments and reviewed the submitted information.

We will initially address Advocacy’s argument that it is not a governmental body as defined by section 552.003 of the Government Code and, thus, the information at issue is not subject to the Act. The Act requires “governmental bodies” to make public, with certain exceptions, information in their possession. According section 552.003(1)(A) of the Government Code a “governmental body” is

the 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[.]

Gov’t Code § 552.003(1)(A)(xii). “Public funds” means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5).

Courts, as well as this office, have previously considered the scope of the Act’s definition of “governmental body.” For example, in *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), an appellate court examined the financial relationship between Texas public universities and the National Collegiate Athletic Association (“NCAA”) to determine whether the NCAA was a governmental body within the statutory predecessor to section 552.003(1)(A)(xii). The *Kneeland* court noted that the attorney general’s opinions generally examine the facts of the relationship between the private entity and the governmental body. The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be

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<sup>3</sup>We note that you have not submitted any of this file information to this office for our review.

expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 at 2 (1987), quoting Open Records Decision No. 228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” *Id.* at 3. Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide “services traditionally provided by governmental bodies.” *Id.*

As stated above, an entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under section 552.003(1)(A)(xii) of the Government Code. In Open Records Decision No. 509 (1988), this office concluded that a private nonprofit corporation established under the federal Job Training Partnership Act and supported by federal funds appropriated by the state was a governmental body for the purposes of the Act. In that case, we analyzed the state’s role under the federal statute and concluded the state acted as more than a simple conduit for federal funds, in part because of the layers of decision-making and oversight provided by the state in administering the programs. ORD 509 at 2. The decision noted that federal funds were initially distributed to the state and then allocated among the programs at issue. *Id.* Citing Attorney General Opinions JM-716 (1987) and H-777 (1976), the decision observed that federal funds granted to a state are often treated as the public funds of the state. *Id.* at 3. Furthermore, in Open Records Decision No. 563 (1990), this office held that “[f]ederal funds deposited in the state treasury become state funds.” ORD 563 at 5 (citing Attorney General Opinions JM-118 (1983); C-530 (1965)). However, if only a distinct part of an entity is supported by public funds within the meaning of section 552.003(1)(A)(xii) of the Government Code, only the records relating to that part supported by public funds are subject to the Act, and records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992) (only records of those portions of Dallas Museum of Art directly supported by public funds are subject to Act).

You inform us that Advocacy is a nonprofit corporation funded by the United States Congress “to protect and advocate for the legal rights of people with disabilities in Texas.” You state that in Texas, Advocacy is the designated state protection and advocacy system, which was created by federal law.<sup>4</sup> You further inform us that Advocacy’s general support is provided by federal funds, which flow directly to Advocacy from the federal government. With respect to Advocacy’s receipt of federal funds, in Open Records Letter No. 2003-8135 (2003), our office previously ruled that Advocacy is not a governmental body subject to the Act. In Open Records Letter No. 2005-5709 (2005), this office relied on our finding in Open Records Letter No. 2003-8135 to again find that Advocacy’s receipt of federal funds did not make it a governmental body subject to the Act. You inform us, however, that during the period of this request, which is subsequent to the date of our previous rulings, Advocacy

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<sup>4</sup>See 42 U.S.C. §§ 10801 – 1085 (known as The Protection and Advocacy for Mentally Ill Individuals Act, or “PAMII Act”), *id.* §§ 15041 – 15045 (known as The Developmental Disabilities Assistance and Bill of Rights Act, or “DD Act”).

received additional federal funding from the Federal Emergency Management Agency ("FEMA"). You state that this funding came "via a UMCOR grant (i.e. United Methodist Commission on Relief) which was designated so that Advocacy could provide assistance to Katrina evacuees with disabilities." You state that another non-profit organization, the National Disability Rights Network, administered the grant funds to Advocacy. As this FEMA money was received from the federal government through other non-profit agencies, we find that this money does not consist of public funds for purposes of section 552.003, and thus, Advocacy's receipt of these funds does not make it a governmental body subject to the Act.

You inform us that Advocacy also receives additional funding for specifically targeted civil legal assistance from three state programs: the Basic Civil Legal Services ("BCLS"), the Interest on Lawyer's Trust Account ("IOLTA"), and the Crime Victims Civil Legal Services ("CVCLS"). You also state that "at various times [Advocacy] has also received limited funding from the Texas Bar Foundation ("TBF")," and that "[d]uring a portion of the period of these requests, Advocacy received small grants for designated purposes from the Corporate, Employment, and Litigation sections of the State Bar of Texas ("SBOT") and from the Southeast Texas Regional Planning Commission ("SETRPC") which have private members and/or quasi governmental connections." We will address these funding sources in turn.<sup>5</sup>

You contend that while Advocacy does receive funding from BCLS and CVCLS, these funds are specifically targeted for civil legal assistance for Advocacy's beneficiaries and cannot be used for the general support of Advocacy. You further inform us that "BCLS and CVCLS funds were not utilized to fund legal services to obtain private school placements for children with special needs."<sup>6</sup> You state the funds received from the SBOT sections were used for conducting specified seminars and for hiring a law clerk and a law student for a particular time period. You additionally state that you believe that the SBOT section grant funds came from donations from private attorneys who are members of the sections or from their payment of section dues. You inform us that the SETRPC grant lasted from April 2006 through December 2006 and was for the purpose of enabling Advocacy to provide case management services to persons with disabilities who were affected by Hurricane Rita. You state that none of the funds received from the SBOT section grant or the SETRPC grant were "utilized to consider placement of students with special needs in private schools" and that

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<sup>5</sup>We note that in Open Records Letter No. 2005-5709, our office found that Advocacy is not a governmental body with respect to its receipt of funds from the Texas IOLTA program with regard to work it does in detention centers. However, although both Open Records Letter Nos. 2003-8135 and 2005-5709 mentioned the funding received by Advocacy from the BCLS and CVCLS state programs, neither ruling reached a conclusion about whether Advocacy is a governmental body with respect to the funding it receives from these sources.

<sup>6</sup>You state that BCLS funds are awarded to provide civil legal services to low income persons with disabilities in certain geographic areas and that CVCLS funds are awarded to allow Advocacy to provide victim related civil legal services to abused foster children with disabilities.

“the funds Advocacy received were for specific, measurable services and not for Advocacy’s general support.”

You state the IOLTA program was established as a Texas non-profit corporation by Texas Equal Access to Justice Foundation, and that the IOLTA program allows attorneys to pool short-term or nominal deposits made on behalf of clients and third parties into one account. You assert that the interest generated by the IOLTA accounts is dedicated to helping non-profit organizations provide free civil legal aid to low-income Texans, and that these private funds are distributed directly to non-profit agencies, such as Advocacy. You also inform us that the TBF is a non-profit organization that distributes private contributions to organizations, such as Advocacy, that provide free legal assistance to low-income Texans. Accordingly, we understand you to contend that this funding constitutes private money passing from one non-profit corporation to another, rather than public funds received from a governmental body.

Based on your representations and our review of the submitted information, we agree that the funds obtained from the BCLS, CVCLS, SBOT section and SETRPC grants were specifically tied to the performance of specific measurable services by Advocacy, and, thus, such funds are not for Advocacy’s general support. In addition, based on your representation that these funds were not utilized to fund legal services to obtain private school placements for children with special needs, we find that Advocacy is not a governmental body subject to the Act with respect to any responsive information relating to private school placements. Finally, based on your representations, we agree that any funds obtained from the TBF and the IOLTA program do not consist of public funds for purposes of the Act. Accordingly, we conclude that Advocacy is not a governmental body subject to the Act with respect to the information at issue in this ruling request and, therefore, Advocacy need not respond to the requests for information. As our ruling is dispositive, we need not address your alternative arguments against disclosure.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

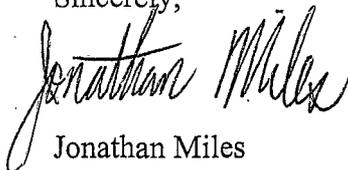
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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. 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 327835

Enc. Submitted documents

c: Requestor  
(w/o enclosures)