



September 8, 2000

Mr. Russell C. Jones  
Jones & Associates, P.C.  
One Sugar Creek Center Boulevard, Suite 550  
Sugarland, Texas 77478

OR2000-3459

Dear Mr. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138707.

Fort Bend County Child Advocates, Inc. ("FBCCA"), which you represent, received a request for the addresses and telephone numbers of the members of the Board of Directors of FBCCA. Subsequently, FBCCA received a second request from the same requestor seeking: a list of all volunteers since January 1, 1999, and the dates of their first training session; volunteer instructions and training materials, with updates; the "Fort Bend Child Advocacy Center Protocol;" the deed to the property where FBCCA is housed; a specific memorandum of understanding; certain statistical information; income and expenses since January 1, 1999; and applications submitted to and contracts with several named agencies. You ask whether FBCCA is a "governmental body" which must comply with the disclosure requirements of the Public Information Act (the "Act"). In addition you ask, if this office finds FBCCA to be a governmental body, whether some of the requested information is protected from required disclosure by section 552.117 of the Government Code.<sup>1</sup>

We first note that you ask this office whether a written request directed to you is sufficient to trigger the Act. In general, a request for public information need not be addressed to the officer for public information. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974). A hypertechnical reading of the Act does not effectuate the purpose of the Act; therefore, a written communication that reasonably can be judged to be a request for public information is a request for information under the Act which triggers the Act's disclosure provisions. *Id.*

---

<sup>1</sup>Although you list Government Code section 552.305 as a pertinent exception, strictly speaking, section 552.305 does not provide an exception to required public disclosure but provides a procedure for notifying third parties whose privacy interests may be at issue. Because you do not provide comment in support of privacy exceptions other than section 552.117, and because we have not received any comments from potentially interested third parties, we will not further address section 552.305. Gov't Code §§ 552.301, 552.305.

You describe FBCAA as a nonprofit corporation which receives grants from governmental agencies. You inform us that FBCCA is divided into four distinct divisions: Court Appointed Special Advocates (“CASA”), Family Assistance Program (“FAP”), Child Advocacy Center (“CAC”), and Development. You have provided us with what you say is a list of “[r]ecent receipts of government funds and their use.” You inform us that “[n]o public funds or grant money are used for the Family Assistance Program or the Development Division.”

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)(x) of the Government Code (“[g]overnmental body’ . . . means . . . 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.”). Public funds are “funds of the state or of a governmental subdivision of the state.” Gov’t Code § 552.003(5).

However, the Act does not apply to private persons or businesses simply because they provide goods or services under a contract with a governmental body. Open Records Decision No. 1 (1973). An entity that receives public funds in exchange for services as would be expected in a typical arms-length contract between a vendor and purchaser is not a governmental body. Attorney General Opinion JM-821 (1987); Open Records Decision No. 228 at 2 (1979). If, however, a governmental body makes an unrestricted grant of funds to a private entity to use for its general support, the private entity is a governmental body subject to the Act. *Id.* If a distinct part of an entity is supported by public funds within section 552.003(1)(A)(x) of the Government Code, the records relating to that part or section of the entity are subject to the Act, but records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992).

In *Kneeland v. National Collegiate Athletic Ass’n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses “governmental bodies” subject to the Public Information Act “‘simply because [the persons or businesses] provide specific goods or services under a contract with a government body.’” *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, 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 and apply three distinct patterns of analysis:

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 expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 (1987), *quoting* ORD-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.’” 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.*

The list of recent receipts shows that the CASA and CAC divisions receive and expend public funds. However, you have not informed us of all sources of support for FBCCA. You state that “FBCCA receives grants from governmental agencies from time to time.” Without more information, we cannot determine whether FBCCA as a whole receives public funds for its general support or expends public funds. Having examined your brief and the information submitted for our review, we conclude that the CAC and CASA divisions of FBCCA are supported in whole or in part by public funds, including funds received from the Criminal Justice Division of the Office of the Governor. In addition, although you state that the grants received are not “unrestricted,” but impose “specific and definite obligations to provide a measurable amount of service,” the grant applications submitted indicate that grant funds are used for the general support of CAC and CASA. *See* Open Records Decision Nos. 621 at 5 (1993) (finding Arlington Economic Development Foundation to be governmental body when agreement with city indicates city was providing general support for foundation), 302 (1982) (finding Brazos County Industrial Foundation to be governmental body when it receives unrestricted grant from city); Attorney General Opinion JM-821 (1987) (receipt of public funds for general support of activities of private organization brings that organization within definition of “governmental body”).

The CAC and CASA divisions are governmental bodies, subject to the Act. As you identify each of the requested items as relating to CAC, CASA, or FBCCA as a whole, which necessarily includes CAC and CASA, you must release the requested information.

You inform us that some of the directors have made an election under section 552.024 of the Government Code to withhold information protected from required public disclosure by section 552.117(1) of the Government Code. Section 552.117(1) excepts a public employee’s home address, home telephone number, or social security number, or information that reveals whether the employee has family members when the public employee requests, under section 552.024, that this information be kept confidential. Therefore,

section 552.117(1) requires you to withhold this information of a current or former employee or official who has elected under section 552.024 to keep this information confidential. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, if a director made the proper section 552.024 election prior to the date of this request, then FBCCA must withhold this information pursuant to section 552.117(1). Otherwise, FBCCA must release this information to the requestor.

In summary, the CAC and CASA divisions of FBCCA are governmental bodies for purposes of the Act. FBCCA must release requested information which relates to either of those divisions or to FBCCA as a whole when that information implicates CAC or CASA information. Therefore, FBCCA must release all of the submitted information, except for the information which FBCCA must withhold under section 552.117 relating to directors who timely made an election to withhold under section 552.024.

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.

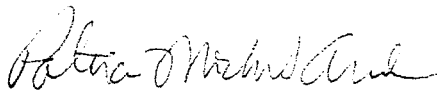
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Department of Public 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 the General Services 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. 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,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 138707

Encl. Submitted documents

cc: Mr. Gary W. Gates, Jr.  
2205 Avenue I #117  
Rosenberg, Texas 78217-1270  
(w/o enclosures)

