



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2022

Mr. Brady Flanery
Assistant City Attorney
City of Dallas
1500 Marilla Street, 5 DS
Dallas, Texas 78201

OR2022-29295

Dear Mr. Flanery:

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# 970814 (ORR# C005399-060522).

The City of Dallas (the "city") received a request for information pertaining to donations regarding the city's Fire-Rescue Adopt-A-Station Fund.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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,

¹ You state, and provide documentation showing, you sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² We note you did not comply with section 552.301 of the Government Code in requesting a ruling from this office. See Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information.

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 (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 (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. *Tilion v. Moye*, 869 S.W.2d 955, 956 (Tex. 1994) (citing *NAACP*, 357 U.S. at 462-63). "[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.* (quoting *NAACP*, 357 U.S. at 460-61).

In re 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*, 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.* (quoting *Buckley*, 424 U.S. at 74). 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 argue the submitted information must be withheld under section 552.101 of the Government Code in conjunction with the freedom of association pursuant to the holding in *Bay Area Citizens*. Upon review, the city has not offered any specific evidence of past or present harassment of a donor due to associational ties with the fund at issue. Thus, the city has failed to establish the release of this information would burden the First Amendment rights as described in *Bay Area Citizens*. Accordingly, we conclude the city may not withhold any of the information under section 552.101 of the Government Code and the right of association.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in

Industrial Foundation. Id. at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision No. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). However, upon review, we find you have failed to demonstrate any of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, the city must release the submitted information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jm

Ref: ID# 970814

c: Requestor