



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2022

Ms. Amanda M. Bigbee
General Counsel
Keller Independent School District
350 Keller Parkway
Keller, Texas 76248

OR2022-36340

Dear Ms. Bigbee:

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# 979066 (PIR Nos. 2195, 2196, and 2208).

The Keller Independent School District (the "district") received three requests from different requestors for information pertaining to book challenges during a certain time period. You claim some of the submitted 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.

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, 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.*

The district states some of the information at issue reveals the identities of individuals who petitioned the district. The district asserts release of the information at issue would subject the individuals at issue to harassment and "burden the First Amendment rights of freedom of association." Upon review of the district's arguments, the totality of the circumstances, and the information at issue, we find the district must withhold the information it marked under section 552.101 of the Government Code in conjunction with the First Amendment right to freedom of association pursuant to the holding in *Bay Area Citizens*. The district must release the remaining 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/pt

Ref: ID# 979066

Enc. Submitted documents

c: Requestor
(w/o enclosures)