

October XX, 2023

The Honorable Letitia James  
Attorney General of New York  
The Capitol  
Albany NY 12224-0341

Dear Attorney General James:

The undersigned organizations write to express our deep concern about July announcement from your office reporting an undisclosed number of confidential Form 990 Schedule Bs “inadvertently posted publicly on the Office of the Attorney General’s registry of charities.”

Our wide variety of missions across the country, and beyond, may be impacted by the Office’s apparent retention of confidential donor information. We care passionately about ensuring donor privacy for all nonprofit organizations and their supporters.

As you know, in *Americans for Prosperity Foundation v. Bonta*, the U.S. Supreme Court ruled “that the up-front collection of Schedule Bs is facially unconstitutional, because it fails exacting scrutiny.” We were pleased that your office promptly suspended the collection of Schedule B forms after the Court released its opinion.

However, we are deeply disappointed that New York has retained the previously filed donor information. Its retention has led to leaks creating burdens for the organizations subjected to the leaks, concerns at many charities registered in New York, worries among major donors about possible exposure, and needless expense for the Charities Bureau.

Therefore, we respectfully request you to instruct the Charities Bureau to destroy all the Schedule Bs possessed by the state, along with any information extracted from them (excepting any information now being used in an active investigation). With notorious data breaches at the highest levels of national government and among corporations with huge stakes in data security, we cannot have confidence in the Charities Bureau’s ability to prevent additional leaks or breaches.

For a nonprofit raising funds from the public, its most valuable asset is its list of the organization’s supporters and/or members. Its “donor file” is the lifeline of the organization and is zealously guarded as confidential, non-public information. Nonprofit organizations may spend decades developing this asset.

Larger-dollar donors, many of whom appear on Schedule B, are especially critical to an organization’s survival and success. Relationships with these donors require development and cultivation, and charities build those relationships based on trust and integrity. The retention, and now leak, of this confidential information by the Charities Bureau threatens that trust and puts charities at risk.

Donors may not want their name and association with a particular issue or cause in the hands of the government or the public for three primary reasons: (1) loss of privacy, (2) if public, others would solicit them or, perhaps, denigrate the organization (or the donor); and (3) the donors may not want their support of a particular cause or issue made known for any number of reasons - e.g., family, religion, modesty, fear of reprisal personally or professionally, or harassment.

Moreover, organizations and their donors may support unpopular causes or controversial issues of social, political, and economic importance. In an increasingly polarized society, many donors will not give without assurances of confidentiality.

A healthy nonprofit sector is essential to our national fabric - without it, who would care for the needy, protect animals, preserve our open spaces, enrich our arts and cultural lives, and lead our nation's churches, mosques, and synagogues?

Since donor privacy is essential for continued growth in individual giving and the fundraising success of charities, we urge you to order the immediate destruction of the Schedule B information to prevent any further leaks and damage to the charitable sector.