



September 8, 1999

Mr. Dewey Gonsoulin  
Mehaffy & Weber  
2615 Calder Avenue  
Beaumont, Texas 77704

OR99-2498

Dear Mr. Gonsoulin:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126314.

The Beaumont Transit Company (the “company”) received a request for documents relating to the driving records of its drivers. You contend that the company need not comply with the request because the company is not an entity subject to the Public Information Act. Alternatively, you argue that the requested information is excepted from disclosure under section 552.102 of the Government Code. We have considered your arguments and have reviewed the submitted materials.<sup>1</sup>

The Public Information Act (the “Act”) requires “governmental bodies” to make public, with certain exceptions, information in their possession. Section 552.003 of the Government Code defines “governmental body,” in part, as

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.

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.003(a)(10). 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(a)(10). The court below had concluded that the NCAA was subject to the Act, finding that its receipt of dues, assessments of television rights fees, and unreimbursed expenses from state universities constituted general support with public funds. The appellate court reversed, holding that the NCAA fell outside the definition of a governmental body in the Act because the public university members received a quid pro quo in the form of specific, measurable services. *See also A. H. Belo Corp. v. Southern Methodist Univ.*, 734 S.W.2d 720 (Tex. App.--Dallas 1987, writ denied) (finding that funds distributed by Southwest Conference to private university members were not public funds; thus, private universities were not governmental bodies).

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) (concluding that bank that holds funds of governmental body is not subject to Act). An entity that receives public funds is not a governmental body if its agreement 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." Open Records Decision No. 228 at 2 (1979); *see also* Attorney General Opinion JM-821 (1987).

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. Open Records Decision No. 228 (1979). If a distinct part of an entity is supported by public funds within section 552.003(a)(10) 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).

The following decisions found certain private entities to be governmental bodies under section 552.003(a)(10) or its statutory predecessor: Attorney General Opinion JM-821 (1987) (volunteer fire department receiving general support from fire prevention district); Open Records Decision Nos. 621 (1993) (Arlington Chamber of Commerce and Arlington Economic Development Foundation, through which chamber of commerce receives support of public funds); 602 (1992) (portion of the Dallas Museum of Art that is supported by public funds); 273 (1981) (search advisory committee that was established by board of regents to recommend candidates for university presidency and that expended public funds); and 228 (1979) (private, nonprofit corporation, with purpose of promoting the interests of

the area, that received general support from city). Alternatively, the following decisions found other private entities not to be governmental bodies under the statutory predecessor to section 552.003(a)(10): Open Records Decision No. 602 (1992) (portion of the Dallas Museum of Art not supported by public funds, in particular, a specific privately donated art collection); and 569 (1990) (Fiesta San Antonio Commission, which leases facilities from city and receives permits and licenses to use public streets for parades and other events).

In Attorney General Opinion JM-821, this office said “[t]he primary issue in determining whether certain private entities are ‘governmental bodies’ under the act is whether they are supported in whole or in part by public funds or whether they expend public funds.” Attorney General Opinion JM-821 at 2 (1987). It is evident from the submitted materials that the company receives financial support from the City of Beaumont (the “city”) and the federal government. Since we have determined that the company receives public funds, we must next consider whether a measurable amount of service is rendered by the company in exchange for the public funds as would be expected in a typical arms-length quid pro quo contract for services. See Open Records Decision No. 228 (1979).

The company has provided for our review a copy of its contract with the city. After reviewing the contract language, it appears that, although in some instances public funds are used for specified services, in others the company receives public assistance for its general day to day “operational support.” Therefore, in the absence of other information from the company establishing that the funds received from public sources are not used for the general support of the company, we conclude that the company is a governmental body for purposes of the Public Information Act. Accordingly, we will address your arguments against the disclosure of the requested information.

Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The submitted documents relate *solely* to the qualifications and job performance of public employees. Since there is a legitimate public interest in the qualifications of a public employee and how he or she performs job functions, the company may not withhold the submitted documents from public disclosure based on the common-law right to privacy. *See generally* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow).

Section 552.101 also excepts from disclosure information protected by constitutional privacy. The constitutional right to privacy consists of two related interests: 1) the individual interest in independence in making certain kinds of important decisions, and 2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional “zones of privacy” described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976) and is clearly inapplicable here.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. Unlike the test for common-law privacy, the test for constitutional privacy involves a *balancing* of the individual’s privacy interests against the public’s need to know information of public concern. Although such a test might appear more protective of privacy interests than the common-law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). As noted above, the information you seek to withhold does not concern the intimate aspects of an individual’s private affairs, but rather directly pertains to the job performance and suitability of your employees. Therefore, the company may not withhold any of the requested information under constitutional privacy.

We do note, however, that some of the information at issue is excepted from disclosure under section 552.130. Section 552.130 of the Public Information Act governs the release and use of information obtained from motor vehicle records. Section 552.130 provides as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or

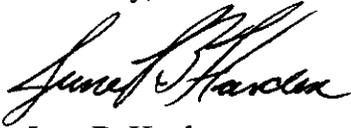
(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Therefore, the company must withhold the submitted drivers' licenses and drivers' license information under section 552.130(a). We have bracketed the information that is subject to section 552.130(a). The remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. We do note, however, that while this ruling disposes of the instant matter, this office will further consider the section 552.130 issue in a formal decision. We also note that this ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref: ID# 126314

Encl. Marked documents

cc: Mr. Jason Trahan  
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(w/o enclosures)