



May 18, 2001

Mr. Joe B. Allen  
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OR2001-2062

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147430.

The Greater Fort Bend Economic Development Council (the "council"), which you represent, received a request for financial statements for a twelve-month period ending on December 31, 2000. You first claim that the council is not a "governmental body" for purposes of the Public Information Act (the "Act"), and therefore, the council is not subject to the requirements of the Act. You further claim that if the council is determined to be subject to the Act, portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

We first address your argument that the council is not a governmental body for purposes of the Act. Under the Act, the public generally has a right of access to information in the possession of a governmental body. See Gov't Code §§ 552.002, .021. A "governmental body" is defined, in relevant 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." *Id.* § 552.003(1)(A)(x). However, this office has long held that private persons or businesses are not "governmental bodies" subject to the Act "simply because [the persons or businesses] provide specific goods or services under a contract with a government body." *Kneeland v. Nat'l Collegiate Athletic Ass'n*, 850 F.2d 224, 228 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989) (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.* As the *Kneeland* court noted, when considering the breadth of the Act’s definition of “governmental body,” this office has distinguished between private entities receiving public funds in return for specific, measurable services, and entities receiving public funds as general support.

For example, Open Records Decision No. 228 (1979) considered whether the North Texas Commission (the “commission”), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, constituted a “governmental body” under the Act. The contract existing between the commission and the City of Fort Worth obligated Fort Worth to pay the commission \$80,000 per year for three years. Open Records Decision No. 228 at 1 (1979). The contract obligated the commission to, among other things, “[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City’s interests and activities.” *Id.* at 2. Noting this provision, this office stated, “[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of ‘supporting’ the operation of the Commission with public funds within the meaning of section 2(1)(F). *Id.* Accordingly, this office found the commission to be a governmental body for purposes of the act. *Id.*

On the other hand, the *Kneeland* court noted that two entities, the National Collegiate Athletic Association (the “NCAA”) and the Southwest Conference (the “SWC”); which received public funds, were not “governmental bodies” for purposes of the Act because both provided specific, measurable services in return for those funds. *Kneeland*, 850 F.2d at 231. Both the NCAA and the SWC were associations made up of both private and public universities. The NCAA and the SWC both received dues and other revenues from its member universities. *Id.* at 226-28. In return for these funds, the NCAA and the SWC provided specific services to its members, such as supporting various NCAA and SWC committees; producing publications, television messages, and statistics; and investigating complaints of violations of NCAA and SWC rules and regulations. *Id.* at 229-31. The court concluded that, while the NCAA and the SWC clearly received public funds from a portion

of its members, neither entity was a “governmental body” for purposes of the Act because these entities did not receive the funds for their general support. Rather, the NCAA and the SWC provided “specific and gaugeable services” in return for the funds it received from its public university members. *See id.* at 231.

Here, you indicate that the council is a nonprofit corporation with 173 members, including 14 members that are “public entities.” You state that the council receives funds from these public entity members, who contribute annual membership fees. You also state that the council receives funds from other public entities pursuant to contracts to provide consulting services. You have provided six contracts under which the council has entered into consulting relationships with various cities and a county. Under these contracts, the governmental bodies agree to provide the council with a specific amount of money in return for specific services, such as soliciting business to the city or county, developing and disseminating information about the governmental body, and advising the governmental body on policies and legislation that could affect or encourage business or industrial growth. Under the contracts, the governmental bodies also are allowed to designate members to the council’s executive committee. With respect to the membership fees the council receives from governmental bodies, you indicate that members contribute money to the council at two levels: trustee and associate. In return for a fee of \$1500, associate members may designate representatives to participate in council meetings and events. In return for a fee of \$6000, a trustee member is eligible for membership in the council’s executive committee and may participate in the strategic planning for the council. In return for membership fees, the council also provides its members access to and use of its publications, maps, and other statistical and narrative information. Based on our review of the contracts and the supporting documentation, we conclude that, similar to the NCAA and the SWC in *Kneeland*, the council receives public funds in the form of membership fees and consulting fees from public entities. *Kneeland*, 850 F.2d at 226-28. However, also similar to the NCAA and the SWC, the council provides specific, measurable services in return for the public funds it receives. *See id.* at 231. Consequently, we find the council is not a “governmental body” for purposes of the Act, and therefore, the council is not required to disclose the requested information to the requestor under the Act. *See id.*

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).

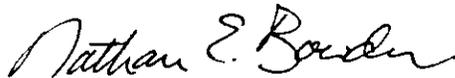
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 147430

Encl: Submitted documents

cc: Mr. A.D. Muller  
24106 Falcon Point Drive  
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(w/o enclosures)