



February 4, 2002

Ms. Barbara Creager
President
Pecos Area Chamber of Commerce
P.O. Box 27
Pecos, Texas 79772

OR2002-0513

Dear Ms. Creager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158144.

The Pecos Area Chamber of Commerce/CVB (the "chamber") received a written request for the following information:

- 1) The results of the recent audit of the [chamber] conducted by Mr. Dan Painter.
- 2) Any cover letters or accompanying documents that were distributed to board members along with the audit results.

We note at the outset that you did not request a decision from this office within ten business days after the department's receipt of the records request. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days after receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977). You do not contend that the requested information comes within any particular exception to required public disclosure listed under subchapter C of the Public Information Act. Rather, you contend that the chamber is not a "governmental body" as defined in section 552.003 of the Government Code, and therefore is not subject to the provisions of the Public Information Act. We have also considered comments submitted to this office by the requestor. Gov't Code §552.304. Accordingly, we will address this threshold issue.

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.

Gov't Code § 552.003(1)(A)(x).¹ 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(1)(A)(x). 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).

¹This provision was also recently numerated as section 552.003(1)(A)(xi) in House Bill No. 936. *See* Act of May 24, 2001, 77th Leg., R.S., ch. 1004, § 2, 2001 Tex. Gen. Laws 2067, 2068.

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(1)(A)(x) 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).²

In Attorney General Opinion JM-821, this office concluded that “[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). In this regard, you have provided this office with the contract between the chamber and the City of Pecos (the “city”). The contract provides in part as follows:

The City upon collecting the [city’s] room occupancy tax shall turn over and pay to the Chamber one hundred percent (100%) of all revenues collected therefrom beginning January 1, 1998, and the Chamber shall expend such funds for the purposes set forth in [Section 27-5 in the city’s Code of Ordinances] as hereinafter more fully agreed by the parties.

The contract then specifies that the chamber is not to commingle the room occupancy tax with any other funds of the chamber, and the percentages of those funds that are to be distributed by the chamber. The contract specifically requires that portions of the room occupancy tax are to be distributed to 1) the West of the Pecos Museum, Inc., 2) the chamber’s Advertising committee, 3) the Chamber of Commerce and Tourism Center, and 4) “a committee appointed by the City Council of [the city].”

Thus, it is apparent that distinct parts of the chamber receive financial support from the city. Because we have determined that the chamber receives public funds, we must next consider whether a measurable amount of service is rendered by the chamber 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).

²The following decisions found certain private entities to be governmental bodies under section 552.003(1)(A)(x) 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(1)(A)(x): 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).

After reviewing the contract language, it appears that the chamber does not receive the room occupancy tax in exchange for a measurable amount of service, but rather for the general day to day "operational support" of the four entities listed above. Therefore, we conclude that the parts of the chamber that receive room occupancy taxes are governmental bodies for purposes of the Public Information Act. *See* Gov't Code § 552.003(1)(A)(x). Because you do not argue that any portion of the requested information falls within an exception to disclosure, we conclude that all portions of the requested information that relate either specifically or generally to the parts of the chamber that receive public funds constitute "public information" held by the chamber that must be released to the requestor. *See also* Gov't Code § 552.022(a)(1) (generally making audits "of, for, or by a governmental body" public information). All remaining portions of the requested documents may be withheld.

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).

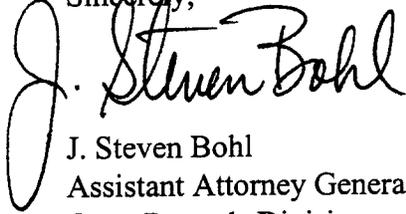
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink that reads "J. Steven Bohl". The signature is written in a cursive style with a large, looped initial "J".

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/RWP/sdk

Ref: ID# 158144

Enc: Submitted documents

c: Mr. Smokey Briggs
Editor/Publisher
Pecos Enterprise
P.O. Box 2057
Pecos, Texas 79772
(w/o enclosures)