



October 30, 2002

Mr. James F. Parker, III
Bracewell & Patterson L.L.P.
Attorney at Law
800 One Alamo Center
106 South St. Mary's Street
San Antonio, Texas 78205-3603

OR2002-6156

Dear Mr. Parker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171413.

Air Force Village ("AFV"), which you represent, received a request for "the pay scale of all administrative personnel of [AFV] for the past five years." You contend that the requested information is not subject to public disclosure because the AFV is not a "governmental body" for purposes of the Public Information Act (the "Act").

We first address the threshold issue of whether the requested information is subject to the 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)(xii). 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 *Kneeland* court recognized that opinions of the Texas Attorney General do not declare private persons or businesses 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*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003, 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.”

In Open Records Decision No. 602 (1992) this office examined the Dallas Museum of Art (the “DMA”), a private, nonprofit corporation under contract with the City of Dallas to care for and preserve the collection of art owned by the City of Dallas, and to maintain, operate, and manage an art museum. The contract required the City of Dallas to support the DMA by maintaining the museum building, paying for utility service, and providing funds for other costs of operating the museum. In that decision, this office noted that an entity receiving public funds is a governmental body under the Act unless its relationship with the governmental body 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. 602 (1992); *see also* Open Records Decision No. 228 (1979) (private, nonprofit corporation, with purpose of promoting the interests of the area, that received general support from City of Fort Worth was governmental body). The decision also noted that “the [City of Dallas] is receiving valuable services in exchange for its obligations, but, in our opinion, the very nature of the services the DMA provides to the [City of Dallas] cannot be known, specific, or measurable.” *Id.* Thus, this office determined that the City of Dallas provides general support of the DMA facilities and operation, making the DMA a governmental body under the Act, to the extent it receives public support. Therefore, the DMA’s records relating to the programs supported by public funds are subject to public disclosure. *Id.*

You state that AFV is a nonprofit corporation “dedicated to providing retired officers of the Uniformed Services, their spouse, widows, and widowers cost-effective retirement living options,” that was established in 1964 through charitable contributions. You explain that AFV

sets aside six (6) beds in its nursing home for Medicare Part A patients. In addition, [AFV] receives payment for services through Part B Medicare As with other health care facilities, AFV receives payment from the federal government in exchange for medical treatment provided to this limited number of patients. Medicare does not provide any general support for [AFV] on an annual basis.

Based upon your representations, we find that AFV provides 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. Thus, we conclude that, in this instance, the receipt of Medicare funds from the federal government does not cause AFV to be considered a governmental body subject to the Act.

You also state that AFV has received funds from revenues raised from the issuance of variable rate bonds by the Bexar County Health Facilities Development Corporation (the “corporation”). You explain that, while the bonds were issued on behalf of AFV by the corporation pursuant to chapter 221 of the Health and Safety Code, the related loan agreement between AFV and the corporation requires that AFV repay the amounts due as the bonds reach maturity. You further explain that the corporation remains free from any liability on the bonds, and that “no public funds were expended to secure or pay off the bonds.” Additionally, you state that the bond issue itself sets forth this payment arrangement, “stating on its face that the obligation must be paid by [AFV]’s repayment of its loan from the [c]orporation and does not constitute an obligation of Bexar County or the State of Texas.” *See* Health & Safety Code § 221.066(b) (bonds issued under this chapter not obligation or pledge of faith and credit of state, sponsoring entity, or other political subdivision or agency of state). Based upon your representations and our review of the documents pertaining to the bonds, we determine that the issuance of these bonds for the

benefit of AFV does not constitute support by public funds for the purposes of the Act. *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353 (Tex. App.--Waco 1998, pet. denied) (nonprofit organization which issues revenue bonds to purchase student loans pursuant to city's request is not governmental body subject to Act; fact that city approves organization's bond issuance does not amount to being supported by public funds).

However, you also inform us that AFV purchased two buses with grant money received from the Texas Department of Transportation. You assert that the grant funds were not commingled with any other portion of AFV's operations, and specifically were not used to pay wages for administrative personnel. Finally, you indicate that the requested information does not relate to the portion of AFV that was supported by the grants. Therefore, we conclude that AFV's receipt of this grant money does not make the records at issue public information subject to the Act. *See Open Records Decision No. 602 (1992)* (portion of Dallas Museum of Art not supported by public funds not governmental body).

Consequently, for the purpose of the information at issue, we conclude that AFV is not a "governmental body" under section 552.003(1) of the Government Code. AFV therefore need not release any of the requested information to the requestor pursuant to the Public Information Act.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 171413

Enc. Submitted documents

c: Ms. Janet M. Cockman
4917 Ravenswood Drive #1753
San Antonio, Texas 78227
(w/o enclosures)