



November 1, 2002

Mr. William F. O'Rourke  
Klitsas & Vercher  
550 Westcott, Suite 570  
Houston, Texas 77007

OR2002-6251

Dear Mr. O'Rourke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170931.

We Care About Kids - Kid Care, Inc. ("KCI"), which you represent, received two written requests from the same requestor for various financial and other records of KCI. You inquire as to the extent to which KCI is a "governmental body" as defined by the Public Information Act (the "Act") and the extent to which the requested records are subject to required public disclosure under the Act. This office has also received comments from the requestor's representative. See Gov't Code § 552.304.

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) (emphasis added).<sup>1</sup> 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 *Kneeland* court noted that the

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

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."

You describe KCI as a "private, non-profit, Texas corporation which was established to provide basic food and other assistance for needy children" and that KCI's "primary source of revenue is from public (non-governmental) and private donations." However, you acknowledge that KCI has received a United States Department of Housing and Urban Development ("HUD") Community Development Block Grant through the City of Houston (the "city") that "was specifically earmarked to aid in the renovation of a new main office for" KCI. The requestor contends that the HUD grant funds received by KCI constitute "public funds" expended by KCI, thus making KCI a "governmental body" under the Act.

An entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under section 552.003(1)(A)(x) of the Government Code. Public funds are "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(5). In Open Records Decision No. 509 (1988), this office concluded that a private nonprofit corporation established under the federal Job Training Partnership Act and supported by federal funds appropriated by the state was a governmental body for the purposes of the Act. In that case, we analyzed the state's role under the federal statute and concluded the state acted as more than a simple conduit for federal funds, in part because of the layers of decision-making and oversight provided by the state in administering the programs. *Id.* at 2. The decision noted that federal funds were initially distributed to the state and then allocated among the programs at issue. Citing Attorney General Opinions JM-716 (1987) and H-777 (1976), the decision observed that federal funds granted to a state are often treated as the public funds of the state. Furthermore, in Open Records Decision No. 563 (1990), this office held that "[f]ederal funds deposited in the state treasury become state funds." *Id.* at 5 (*citing* Attorney General Opinions JM-118 (1983); C-530 (1965)).

In this instance, the city administers the federal Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301 *et seq.*, and awards the federal Community Development Block

Grant funds to grantees the city determines to be eligible for such funds. We therefore conclude that the federal grant monies received by KCI through the city constitute "public funds" for purposes of section 552.003(5) of the Government Code.

However, the Act does not apply to private persons or businesses simply because they receive public funds from a governmental body. Open Records Decision No. 1 (1973). For example, an entity that receives public funds in exchange for services as would be expected in a typical arms-length contract between a vendor and purchaser is not a governmental body. Attorney General Opinion JM-821 (1987); Open Records Decision No. 228 at 2 (1979). On the other hand, where 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. *Id.* However, if only a distinct part of an entity is supported by public funds within section 552.003(1)(A)(x) of the Government Code, only the records relating to that part supported by public funds are subject to the Act, and records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992).

As noted above, you acknowledge that KCI has renovated its office building utilizing matching federal grant money that was specifically earmarked for that purpose. We therefore conclude that KCI is a "governmental body" for purposes of section 552.003(1)(A)(x), but only with regard to the federal funds it received in connection with the renovation project. Consequently, the requested records that pertain to the renovation project constitute "public information" that is subject to required public disclosure. Because you do not contend that such records fall within any of the Act's exceptions to required public disclosure, KCI must release its records pertaining to the renovation project. However, we further conclude that because the remaining requested records do not pertain to the receipt or expenditure of "public funds," those remaining records are not subject to the Act and therefore need not be released in this instance. *See* Open Records Decision No. 602.<sup>2</sup>

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

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<sup>2</sup>This ruling does not address the extent to which the requested records are subject to disclosure under the Texas Non-Profit Corporation Act, article 1396-2.23A(c), V.T.C.S.

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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/RWP/lmt

Ref: ID# 170931

Enc: Submitted documents

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