



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

August 8, 2003

Mr. Noley R. Bice
General Counsel
Baylor University
P.O. Box 97034
Waco, Texas 76798-7034

OR2003-5533

Dear Mr. Bice:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185652.

The Public Safety Department (the "department") of Baylor University (the "university") received two requests for information related to seven named individuals. You contend that the department is not a "governmental body" under the Public Information Act (the "Act") and therefore, the requested records are not subject to required public disclosure under the Act. We agree.

The Act generally makes public the records of governmental bodies. Gov't Code §§ 552.001, .003, .021, .221. The Act defines "governmental body" in pertinent 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)(xii). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). Thus, the department would be considered a governmental body subject to the Act if it spent or were supported in whole or in part by public funds.

The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.--Waco 1998, pet. denied). Further, in Attorney General Opinion JM-821 (1987), this office concluded that "the primary issue in determining whether certain private entities are governmental bodies under the [predecessor of] 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).

You state that the university is recognized as a private university by the State of Texas and the federal government for purposes of taxation and other matters. You inform us that the university only receives public funds through student tuition grants and grants restricted for certain purposes and tasks requiring certain performance by the university. You inform us that the department itself receives no public funds.

We have previously addressed the status of the university under the Act. After analyzing the statutory predecessor to section 552.003(a)(A)(xii), we concluded that because the university is not supported in whole or in part by public funds nor expends public funds within the meaning of the Act, the university is not a governmental body subject to the Act. *See Open Records Decision No. 510 (1988)*; *see also B.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).

After careful review of your arguments, we find that the department does not spend and is not supported in whole or in part by public funds. *Cf., Blankenship*, 975 S.W.2d at 362 (nonprofit organization that received no public funds held not governmental body; fact that city approves organization's bond issuance does not amount to being supported by public funds); Open Records Decision Nos. 602 (1992) (portion of Dallas Museum of Art not supported by public funds held not to be governmental body); 569 (1990) (Fiesta San Antonio Commission designated by city ordinance as fiesta planning agency but receiving no public funds held not governmental body); 317 (1982) (mayor's task force that examined city governmental structure but did not spend and was not supported by public funds held not governmental body). Consequently, we conclude that the department is not a governmental body subject to the Act, and therefore, it need not respond to the instant requests for its information.

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 Dep't of Pub. 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

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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# 185652

Enc. Submitted documents

c: Ms. Cindy V. Culp
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