



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2003

Mr. Phillip Imoisi
Director
Houston Area Urban League
1301 Texas Avenue
Houston, Texas 77002

OR2003-7519

Dear Mr. Imoisi:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188982.

The Houston Area Urban League ("HAUL") received a request for all documents relating to Community Block Development Grant ("CBDG") funds distributed by HAUL under Matrix Code 14A and 14H, Rehabilitation: Single-Unit Residential and Rehabilitation Administration, including but not limited to the contract between HAUL and the City of Houston, project files, all financial records relating to the receipt or expenditure of funds, including but not limited to accounts, vouchers, and contracts, all working papers, research material, and information used to estimate the need for an expenditure of funds, all formal and informal policies and procedures, and administrative staff manuals and instructions to staff that affect the funds. You request an exemption from the Public Information Act (the "Act") for the Home Repairs Program (the "Program") of HAUL, asserting that the Program is not supported by local or state funds.¹ In the alternative, you claim that the requested records are excepted from public disclosure under section 552.101 of the Government Code and common-law privacy. We have considered your arguments and the comments submitted by the requestor. See Gov't Code § 552.304 (providing for submission of public comments).

¹See Gov't Code §§ 552.002, 552.003; *Blankenship v. Brazos Higher Educ. Auth.*, 975 S.W.2d 353 (Tex. App.—Waco 1998, pet. denied) (suggesting that entity may include request for determination as to whether it is governmental body subject to Act as part of its section 552.301 request, without admitting that entity is governmental body subject to 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) (emphasis added). 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)(xii). 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.”

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)(xii) 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)).

HAUL is a nonprofit community based organization and its Program assists extremely low to low income families with home repairs. You inform us that “[t]he monies used for this program are federal funds (HOME and CBDG grants) and private funds from our corporate sponsors.”² We note that the City of Houston’s (the “City”) Housing and Community Development Department Emergency Home Repair Program receives the United States Department of Housing and Urban Development (“HUD”) CBDG funds. The City’s Emergency Home Repair Program uses repair agencies, such as HAUL, to organize and implement the home repairs of eligible homeowners requesting assistance. We also note that the requestor has submitted information that she states is obtained from the City and that evinces that the Program is in part funded by the City. The requestor contends that the HUD grant funds received by HAUL from the City that are used to support the Program constitute “public funds” expended by the Program. The contract between the City and HAUL (the “Contract”) obligates HAUL to return to the City any income generated by or derived from Contract activities and, upon expiration of the Contract, to transfer to the City any CBDG funds still on hand and any accounts receivable attributable to the use of CBDG funds. Under the Contract, the City also reserves the right to reappropriate the federal funds as may become necessary based on re-budgeting for decreased expenditures. Excess funds remaining after re-budgeting are subject to reallocation at the sole discretion of the City. These Contract provisions and others demonstrate that the City exercises considerable control over the federal funds and we therefore find that the federal grant monies received by HAUL 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)(xii) 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).

²Thus, we understand that HAUL does not receive funds under the federal Community Services Block Grant program. See Gov’t Code § 552.003(1)(A)(xi).

The remaining issue is whether the public funds received by HAUL from the City were for the general support of the Program, or were payment for the performance of specific contractual duties. According to Section 1.04 of the Contract, HAUL “shall utilize the funds pursuant to this contract in accordance with the budget.” The budget contemplated by Section 1.04 reveals that the CBDG funds received from the City provide over 70% of the salaries and wages paid to Program employees. While the City may be receiving valuable services in exchange for the public funds it provides to HAUL, we find that the Contract puts the City in the position of providing general support for the operation of the Program. We therefore conclude that HAUL is a “governmental body” for purposes of section 552.003(1)(A)(xii), but only with regard to the federal funds it received in connection with the Program. Consequently, to the extent the requested records pertain to the Program, they constitute “public information” and are subject to required public disclosure. However, because you contend that the requested records are protected from public disclosure by section 552.101 of the Government Code and common-law privacy, we will consider your argument under that exception.

We must first address HAUL’s obligations under section 552.301 of the Act. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general’s decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov’t Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body’s claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

In this instance, HAUL has not submitted a copy of the written request for information, as required by section 552.301(e)(1)(B). Further, HAUL has not submitted any evidence of the date it received the request, or the specific information that they seek to withhold or representative samples of the information if it is voluminous, as required by section 552.301(e)(1)(C) and (D). HAUL’s failure to submit the information required by section 552.301(e)(1)(B) and (C) leaves this office with no means of concluding that HAUL has complied with section 552.301(b) in requesting this decision. We thus find that HAUL has not complied with section 552.301(b) or (e). Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a

compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. Although you contend the information at issue is excepted from public disclosure under section 552.101 of the Government Code, which protects “information considered to be confidential by law,” without a copy of the requested information, this office has no basis on which to conclude that the requested information is confidential for purposes of that exception. Consequently, we have no choice but to conclude that the information at issue is public under section 552.302 and therefore must be released to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

In summary, to the extent the requested records pertain to the Program, they constitute “public information” and are subject to required public disclosure. Without a copy of the requested information, we have no basis on which to conclude that the requested information is confidential. Consequently, we conclude that the information at issue is public under section 552.302 and therefore must be released to the requestor. We further conclude that if the requested records do not otherwise pertain to the receipt or expenditure of “public funds,” the requested records that are not related to the Program are not subject to the Act and therefore need not be released in this instance. *See Open Records Decision No. 602*.

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 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 188982

Enc: Submitted documents

c: Ms. Marsha Farmer
1730 Woodcrest
Houston, Texas 77018
(w/o enclosures)