



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2004

Mr. Eduardo Alvarez
President
Lake Jackson Girls Softball Association
P.O. Box 145
Lake Jackson, Texas 77566

OR2004-3442

Dear Mr. Alvarez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 200380.

The Lake Jackson Girls Softball Association (the "Association") received a request for access to and copies of "all approved freshman coaching applications including but not limited to experience in coaching, also the files kept by LJGSA on every approved freshman coach for spring 2004." The requestor also seeks "copies of everything in [the requestor's] file kept by LJGSA, including complaints and alleged threats [the requestor] made." You claim that the Association is not a governmental body subject to the Act and that, consequently, the Association need not comply with the request. We have considered your arguments. We have also considered the requestor's comments. *See* Gov't Code § 552.304 (permitting submission of public comments).

The Act requires a governmental body to make information that is within its possession or control available to the public, with certain statutory exceptions. *See* Gov't Code §§ 552.002(a), .006, .021. Section 552.003 of the Act 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). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). The question becomes, then, whether an entity "spends or . . . is supported in whole or in part by public funds." *See id.*

Both the courts and this office have considered the scope of the definition of "governmental body" under the Act and its statutory predecessor. In *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of this office do not declare private persons or businesses to be "governmental bodies" that are 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, the *Kneeland* court noted that in interpreting the predecessor to section 552.003, this office'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."

Id.

The *Kneeland* court ultimately concluded that the National Collegiate Athletic Association (the "NCAA") and the Southwest Conference (the "SWC"), both of which received public funds, were not "governmental bodies" for purposes of the Act, because both provided specific, measurable services in return for those funds. *See Kneeland*, 850 F.2d at 230-31. Both the NCAA and the SWC were associations made up of both private and public universities. The NCAA and the SWC both received dues and other revenues from their member institutions. *See id.* at 226-28. In return for those funds, the NCAA and the SWC provided specific services to their members, such as supporting various NCAA and SWC committees; producing publications, television messages, and statistics; and investigating complaints of violations of NCAA and SWC rules and regulations. *See id.* at 229-31. The *Kneeland* court concluded that, although the NCAA and the SWC received public funds from some of their members, neither entity was a "governmental body" for purposes of the Act, because the NCAA and SWC did not receive the funds for their general support. Rather, the NCAA and the SWC provided "specific and gaugeable services" in return for the funds that they received from their member public institutions. *See id.* at 231; *see also A.H. Belo Corp. v. S. Methodist Univ.*, 734 S.W.2d 720 (Tex. App. – Dallas 1987, writ denied) (athletic

departments of private-school members of SWC did not receive or spend public funds and thus were not governmental bodies for purposes of Act).

In exploring the scope of the definition of "governmental body" under the Act, this office has distinguished between private entities that receive public funds in return for specific, measurable services and those entities that receive public funds as general support. In Open Records Decision No. 228 (1979), we considered whether the North Texas Commission (the "commission"), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, was a governmental body. *See id.* at 1. The commission's contract with the City of Fort Worth obligated the city to pay the commission \$80,000 per year for three years. *See id.* The contract obligated the commission, among other things, to "[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City's interests and activities." *Id.* at 2. Noting this provision, this office stated that "[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of "supporting" the operation of the commission with public funds within the meaning of section 2(1)(F). *See id.* Accordingly, the commission was determined to be a governmental body for purposes of the Act. *See id.*

In Open Records Decision No. 602 (1992), we addressed the status of the Dallas Museum of Art (the "DMA") under the Act. The DMA was a private, nonprofit corporation that had contracted with the City of Dallas to care for and preserve an art collection owned by the city and to maintain, operate, and manage an art museum. *See id.* at 1-2. The contract required the city to support the DMA by maintaining the museum building, paying for utility service, and providing funds for other costs of operating the museum. *See id.* at 2. We noted that an entity that receives public funds is a governmental body under the Act, unless the entity's relationship with the governmental body from which it receives funds 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." *Id.* at 4. We found 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.* at 5. Thus, we concluded that the City of Dallas provided general support to the DMA facilities and operation, making the DMA a governmental body to the extent that it received the city's financial support. *See id.* Therefore, the DMA's records that related to programs supported by public funds were subject to the Act. *See id.*

We note that the precise manner of public funding is not the sole dispositive issue in determining whether a particular entity is subject to the Act. *See* Attorney General Opinion JM-821 at 3 (1987). Other aspects of a contract or relationship that involves the transfer of public funds between a private and a public entity must be considered in determining whether the private entity is a "governmental body" under the Act. *See id.* at 4. For example, 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" under section 552.003(1)(A)(xii). The overall nature of the relationship created by the contract is relevant in determining whether the private entity is so closely associated with the governmental body that the private entity falls within the Act. *See id.*

You inform us that the Association is a section 501(c)(3) non-profit organization. You also inform us that for the year 2004, the Association has received no funds from any governmental body. In addition, you state that, in the past, the City of Lake Jackson has provided funds to the Association in the following manner: (1) In 2003, \$2,995.00 for reimbursement for fence installation on city-owned fields, \$2,468.41 for reimbursement for storm damage repairs on city-owned fields, and \$5,000.00 to help host a state tournament; (2) in 2002, \$5,000.00 to help host state tournament; (3) in 1996, \$5000.00 to help host U.S. Olympic Softball; and (4) \$240 to purchase an ad in a softball booklet. The requestor states that "My husband was fundraiser and during a board meeting they were told the city had given LJGSA \$15000.00 for batting cages. LJGSA only had to raise approx. \$7000.00 to complete payment for said batting cages."

This office cannot resolve disputes of fact in the open records process and so, must rely on the representations of the entity who requests our decision. *See Open Records Decision Nos. 554 at 4 (1990)(attorney general's reliance on representations of governmental body in resolving disputes of fact), 426 at 4 (1985) (same).* As the Association represents that it is currently receiving no government funds, we find that the Association is not now "supported in whole or in part by public funds." *See Gov't Code § 552.003(1)(A)(xii).* Nor do the funds the Association received in past years for upkeep of the city-owned fields, hosting of softball tournaments and events, and the booklet advertisement - all situations involving a specific and definite obligation to provide a measurable amount of service in exchange for a certain amount of money- demonstrate that the Association is now supported in whole or in part by city funds. *See Kneeland, 850 F.2d at 228.* Consequently, the Association is not a governmental body and its records are not subject to public disclosure under the 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).

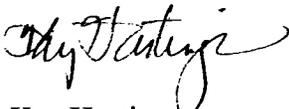
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 200380

c: Ms. Tanya R. Wynne
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