



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

August 31, 2004

Ms. Megan P. Lindberg  
Cox & Smith, Incorporated  
112 East Pecan Street, Suite 1800  
San Antonio, Texas 78205-1521

OR2004-7409

Dear Ms. Lindberg:

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# 207180.

The Texas Migrant Council ("TMC") received a request for information related to an injury sustained by the requestor and to a particular grievance hearing. You first contend that TMC is not a governmental body subject to the Act, and therefore TMC is not subject to the requirements of the Act. You further claim that if TMC is determined to be subject to the Act, the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We first address the threshold issue of whether TMC is subject to the Act. 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. Under the Act, the term "governmental body" includes several enumerated kinds of entities and "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 are "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(5).

If only a distinct part of an entity is supported by public funds within the meaning of 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) (only records of those portions of Dallas Museum of Art directly supported by public funds are subject to Act).

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. ORD 509 at 2. The decision noted that federal funds were initially distributed to the state and then allocated among the programs at issue. *Id.* 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. *Id.* at 3. Furthermore, in Open Records Decision No. 563 (1990), this office held that “[f]ederal funds deposited in the state treasury become state funds.” ORD 563 at 5 (citing Attorney General Opinions JM-118 (1983); C-530 (1965)).

In this case, you state that TMC

submits a full proposal [regarding the Head Start program] to the [United States Department of Health and Human Services (“DHHS”)] every three years and updates that proposal every year. Based on the proposal . . . the DHHS issues an Award, which adopts the Proposal and establishes the budget with which TMC must comply. Wages paid to administrative personnel associated with the Head Start program are derived from the federal funds budgeted in the Award.

You further inform us that the requestor “was paid with federal funds allocated in the Award[, and that] the information sought by [the requestor] relates solely to her employment with the Head Start program, which is funded by the federal government.” You also state that “the funding received by TMC for the Head Start program is exclusively federal.” Based on the information you have provided and the representations you make, we further understand you to assert that, unlike the Job Training Partnership Act, the federal funds received by TMC for the Head Start program were distributed directly to TMC.

Because TMC received only direct federal funding for the Head Start program, it did not receive any “public funds” for purposes of the Act with regard to this program or to the requestor's employment with this program. *See* Gov't Code § 552.003(5). Accordingly, after reviewing your arguments and representations, we conclude that the portion of TMC that administers the Head Start program is not a governmental body subject to the Act and

need not comply with its disclosure provisions with regard to the instant request.<sup>1</sup> As our ruling is dispositive, we do not address the claimed exceptions.

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.

---

<sup>1</sup>We note that the federal Freedom of Information Act applies to records of federal agencies.

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# 207180  
Enc. Submitted documents

c: Ms. Ruth Ybarra  
609 Jasmine Avenue  
McAllen, Texas 78501  
(w/o enclosures)