



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2004

Mr. Larry E. Wadler  
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Wharton, Texas 77488

OR2004-8926

Dear Mr. Wadler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211297.

The William Smith, Sr. Tri-County Development Council, Inc. (the "council"), which you represent, received a request for the following records for fiscal years 2001, 2002, and 2003: list of employee salaries and corresponding job description; list of company vehicles and corresponding list of employees assigned to those vehicles; documents and/or itemized receipts related to travel and/or reimbursement to employees for any expenses, including petty cash expenditures; copies of all cancelled checks written by a named employee; documents and/or itemized receipts showing any donations paid to other non-profit entities and/or churches; documents and/or itemized receipts showing any payments to a guest speaker for an event; and documents and/or itemized receipts showing incoming non-monetary donations along with explanation as to how the donations are being utilized. You argue that the council is not a governmental body subject to the Public Information Act (the "Act") and therefore is not required to comply with this open records request. We have considered your arguments and reviewed the information you submitted.

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). The phrase "public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5).

Both the courts and this office previously have considered the scope of the definition of "governmental body" under the Act and its statutory predecessor. In *Kneeland v. National*

*Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), 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 of the Government Code, 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 id.*, 850 F.2d at 230-31. Both the NCAA and the SWC were associations made up of both private and public universities. Both the NCAA and the SWC received dues and other revenues from their member institutions. *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. *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* Open Records Decision No. 288 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. *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).” *Id.* Accordingly, the commission was determined to be a governmental body for purposes of the Act. *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* Open Records Decision No. 602 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. *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. *Id.* Therefore, the DMA’s records that related to programs supported by public funds were subject to the Act. *Id.*

We additionally 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 involve 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. *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) of the Government Code. 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. *Id.*

You state that the bulk of funding received by the council is federal funding, which is not considered "public funds" as defined by section 552.003(5) of the Government Code. We agree that those portions of the council which are supported solely by direct federal funding are not subject to the Act. *See* Gov't Code § 552.003(5). However, you also inform this office that the council receives funds from two agencies of the State of Texas. You state that the council received funds from the Texas Education Agency (the "TEA") in a two-year grant for 2001-2002 and again for 2003-2004 and also from the Texas Department of Agriculture (the "TDA"). We first examine the nature of the funds received from the TEA.

You state that the funds from the TEA were received subject to a grant request for the council to operate the Texas Ready to Read Program in three counties. You state that the "obligation to operate the reading improvement program was a specific duty and the funds were not used for the 'general support or activities of the organization[.]'" We note that the TEA is required to "administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs." Educ. Code § 7.021(b)(1). We further note that, with regard to Ready to Read grants, the commissioner of education "shall establish a competitive grant program for distribution of at least 95 percent of the available appropriated funds." Educ. Code § 29.157(b). We have reviewed the submitted grant request and letter of approval and find that the council and the TEA share a common purpose and objective such that an agency-type relationship is created. *See* Open Records Decision No. 621 at 9 (1993). Further, we find that many of the specific services that the council provides pursuant to the grant, namely public education, comprise traditional governmental functions. *See* ORD 621 at 8 n.10. Accordingly, we conclude that the portion of the council that administers the Texas Ready to Read Program falls within the definition of a "governmental body" under section 552.003(1)(A)(xii) of the Government Code with respect to the services it performs under the grant at issue. Consequently, information related to the Texas Ready to Read Program is subject to the Act as public information. *See* ORD 602 at 5; *see also* Gov't Code §§ 552.002(a), .006, .021.

We now turn to the funds which, you state, are received from the TDA. We understand that the TDA and the Texas Department of Human Services (the "DHS") administer the Child and Adult Care Food Program ("CACFP") in Texas. You state that funds received from the TDA were paid to the council for meals provided to children pursuant to the CACFP. You also state that the "consideration for each meal was not based upon a cost, but rather a specified amount predetermined by the TDA." You further inform us that these funds were part of a Federal Block grant to states to be given to schools to provide breakfast and lunch to underprivileged children. We note that the materials you have submitted in support of your arguments reflect the council's interaction with the DHS in applying for and receiving funding for this program. Accordingly, we examine the specific nature of the funding received from the DHS.

We note that in Open Records Decision No. 509 (1988), this office concluded that a private nonprofit corporation established under the 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 case, the supporting materials reflect that the council applied for funding for the food program through the DHS. The council was approved for this funding and receives federal funding through the DHS. In section I.A of one of the submitted agreements between the council and the DHS, the DHS retains the right to terminate the contract if the council fails to provide services in accordance with the provisions noted therein. Section IV.C of the same agreement requires the council to “compile data, maintain records, and submit reports as required . . . and permit authorized [DHS (and) the United States Department of Agriculture] . . . personnel during normal working hours to review such records, books, and accounts as needed to ascertain compliance with [specified laws].” Finally, the same agreement gives the DHS and other entities the right to seek judicial enforcement of the council’s obligations pursuant to the agreement. We find that provisions such as these demonstrate that the DHS has oversight over the distribution of the funds. Accordingly, the council receives public funds in connection with the school meal program.

As previously noted, however, the Act does not apply to private persons or businesses simply because they receive public funds from a governmental body. *See* Attorney General Opinion JM-821 (1987); Open Records Decision Nos. 1 (1973), 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. *See* Attorney General Opinion JM-821 (1987); ORD 228 at 2. 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. ORD 602.

The submitted materials reflect that portions of the requested funding go toward general support of the school meal program, including administrative and program salaries, training, travel, office supplies, and other “non-food supplies.” Thus, we find that the public funds received through the DHS go towards the general support of the school meal program. Accordingly, we find that the portion of the council that operates the school meal program is subject to the Act, and, therefore information relating to the activities and operations of the school meal program by the council is subject to the Act. *See* ORD 602 at 5 (1992).

The council does not contend that records relating to the Texas Ready to Read Program or the school meal program are encompassed within any of the Act’s exceptions to disclosure, nor has the council submitted any such records to this office for our review. Accordingly, we conclude that the council must release the requested information related to the Texas Ready to Read Program and the school meal program to the requestor to the extent that they

exist.<sup>1</sup> See Gov't Code §§ 552.301, .302. Information related to the portions of the council supported directly by federal funds are not subject to the Act and need not be released.<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 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).

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request for information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>With regard to the "copies of all canceled checks written by [a named individual]." you state that the council is "not clear as to what checks are being requested." We note that when the council is unclear as to what documents are being requested, you may seek clarification from the requestor as to the type or nature of the documents being requested. See Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request); see also Open Records Decision No. 663 at 5 (1999) (discussing requests for clarification).

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/krl

Ref: ID# 211297

Enc. Submitted documents

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