



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 11, 2008

Ms. Maureen R. M. Singleton  
Bracewell & Giuliani LLP  
711 Louisiana Street Suite 2300  
Houston, Texas 77002-2770

OR2008-07966

Dear Ms. Singleton:

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# 312427.

The Pasadena ISD Education Foundation (the "foundation"), which you represent, received a request for the names, home addresses and telephone numbers, and e-mail addresses of all of the foundation's donors. You contend that the foundation is not a governmental body for the purposes of the Act. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered your arguments and have reviewed the information you submitted.<sup>1</sup>

We begin with your contention that the foundation is not a governmental body. The Act defines the term "governmental body" as encompassing "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 determination of whether a particular entity is a governmental body for the 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, 360-62 (Tex. App. – Waco 1998, pet. denied). In Attorney General Opinion JM-821 (1987), this office concluded that "the primary issue in determining whether certain private entities are governmental

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the foundation to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

bodies under the 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. Thus, the foundation would be considered a governmental body that is subject to the Act if it spends or is supported in whole or in part by public funds.

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 the purposes of the Act, because both provided specific, measurable services in return for those funds. *See id.* 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 Southwest Conference 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* ORD 228 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 the 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* ORD 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.*

In Attorney General Opinion MW-373 (1981), we examined the status of the University of Texas Law School Foundation (the “UT Law Foundation”), a nonprofit corporation that solicited donations and expended funds to benefit the University of Texas Law School (the “university”). Pursuant to a Memorandum of Understanding, the university provided the UT Law Foundation space in the law school building to carry out its obligations, utilities and

telephone services, and reasonable use of university equipment and personnel to coordinate the activities of the UT Law foundation with the educational operations of the university. This office found that such services amounted to support for the purposes of the Act and concluded that “[s]ince the [UT Law F]oundation receives support from the university that is financed by public funds, its records relating to the activities supported by public funds will be subject to public scrutiny.” Attorney General Opinion MW-373 at 11, citing ORD 228. The opinion noted that the purpose of the UT Law Foundation was to raise funds and provide resources for the benefit of the university and considered that the provision of office space and other assistance enhanced the cost effectiveness of operating the UT Law Foundation. Further, the opinion noted that the university retained control over the relationship of the UT Law Foundation and the university through the authority of the university board of regents to control the use of university property. Thus, since the UT Law Foundation received general support from the university, and the university is financed by public funds, the UT Law Foundation was found to be a governmental body for the purposes of the statutory predecessor of the Act. Therefore, the UT Law Foundation’s records relating to the activities supported by public funds were subject to public disclosure.

You inform us that the foundation is a Texas non-profit corporation and a “legal entity separate and apart from the Pasadena Independent School District” (the “district”). You state that “[e]ach year the [f]oundation engages in fundraising activities that result in funds that the [f]oundation contributes to the [d]istrict for the implementation of various [d]istrict projects and programs.” You inform us that

[i]n exchange for the funds paid by the [f]oundation and as consideration for the [f]oundation’s fundraising, programmatic, and community and related services that benefit the [d]istrict, the [d]istrict provides remuneration to the [f]oundation through certain in-kind operational services, including services provided by [d]istrict employees, the use of a small amount of office space, and the use of some supplies to support [f]oundation activities.

You state that the total estimated value of services provided to the foundation by the district on an annual basis is \$68,493.00. You also state that although the district and the foundation have been operating under a verbal understanding of the arrangement described above, they are in the process of reducing their relationship to a formal written agreement. You have provided a copy of the agreement. You inform us that the agreement has been approved by the foundation’s board of directors and was scheduled for consideration by the district’s board of trustees when the foundation received this request for information.

Although you assert that “the [f]oundation is not supported by the public funds of the [d]istrict,” we find that the foundation’s use of the district’s personnel, office space, and supplies amounts to general support of the operations of the foundation by the district for the purposes of the Act. See Attorney General Opinion MW-373; see also ORD 228. Likewise, although you also assert that “there is a *quid pro quo* exchange under a mutually beneficial relationship” between the foundation and the district, we find that you have not demonstrated that the foundation has an arms-length relationship with the district. You do not indicate that

the funds that the foundation provides to the district are designated as a reimbursement of the cost of the support that the district provides to the foundation.

Moreover, the foundation's pending agreement with the district does not appear to contemplate any material change in the relationship between the foundation and the district. Among other things, the agreement provides that although the foundation will assume responsibility for the cost of its variable expenses, the foundation will continue to receive the "use of [d]istrict personnel, facilities, and equipment[.]" The agreement also provides that "the [d]istrict agrees to assign [d]istrict employees as reasonably necessary to support the [f]oundation's operations and activities performed on behalf of the [d]istrict." The agreement further states that "the [d]istrict will provide to the [f]oundation the use of office space at a [d]istrict facility, access to necessary space for [f]oundation meetings, and the use of the [d]istrict's telecommunications system, on-site copying machine, and computer/electronic mail systems." Additionally, the agreement provides that "[t]o the extent permitted by and in accordance with applicable law, the [s]uperintendent [of schools] will include in the [d]istrict's annual budget appropriate support for the [f]oundation[.]" It also states that "[t]he [s]uperintendent also shall assign a [d]istrict administrator . . . to serve as liaison to the [f]oundation [who] may be referred to as Executive Director of the [f]oundation when performing services related to the [d]istrict's support of the [f]oundation but shall be an employee of the [d]istrict[.]"

Having considered your representations and reviewed the pending agreement between the foundation and the district, we find that the foundation's sole purpose is to generate financial support and provide resources for the benefit of the district. We also find that the district provides general support to the operations of the foundation. We therefore conclude that by reason of its acceptance of the district's general support of its operations, the foundation is a "governmental body" for the purposes of the Act. *See* ORD 602 at 5. Consequently, the records of the foundation are subject to the Act. *See* Gov't Code §§ 552.002, .021. Accordingly, we will address the foundation's claimed exceptions to disclosure of the information at issue.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> *Id.* § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses certain types of personal financial information. Financial information that is related only to an individual ordinarily satisfies the first element of the common-law privacy

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<sup>2</sup>We note that the foundation did not raise section 552.101 of the Government Code within the ten-business-day deadline prescribed by section 552.301 of the Government Code. *See* Gov't Code §§ 552.301(b), .302. Nevertheless, because section 552.101 is a mandatory exception that a governmental body may not waive, we will address your claim under this exception. *See id.* §§ 552.007, .352.

test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

You contend that information relating to the foundation's donors, including their names, is protected by common-law privacy.<sup>3</sup> We first note that the donor information at issue encompasses both individuals and public and private entities. Common-law privacy protects the interests of individuals, not those of business and governmental entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Therefore, the foundation may not withhold any of the submitted information relating to donors that are public or private entities under section 552.101 in conjunction with common-law privacy. With respect to the remaining donor information, we note that in Open Records Decision No. 590 (1991), this office determined that a donation of money to a university was a financial transaction between the donor and a public body. Therefore, such a transaction does not involve facts about an individual's private affairs. *Id.* at 3. Moreover, such a transaction is a matter of legitimate public concern, because the public has a legitimate interest in knowing who funds and therefore potentially influences public entities. *Id.* This concern encompasses both the amount of the donation and the identity of the donor. *Id.* We therefore conclude that the remaining donor information is not protected by common-law privacy and may not be withheld on that basis under section 552.101.

You also raise section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who

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<sup>3</sup>You concede that the foundation is not an institution of higher education for the purposes of section 552.1235 of the Government Code, which excepts from disclosure "[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education[.]" Gov't Code § 552.1235(a); *see id.* § 552.1235(c) (for purposes of Gov't Code § 552.1235, "institution of higher education" has meaning assigned by Educ. Code § 61.003).

requests that the information be kept confidential under section 552.024 of the Government Code. You seek to withhold, under section 552.117, information relating to employees of the district who contribute to the foundation. Section 552.117 is applicable, however, only to personnel information maintained by the governmental body that is or was the employer of the individual to whom the information pertains. *See* Gov't Code §§ 552.024, .117; Open Records Decision No. 530 (1989) (addressing statutory predecessor). We therefore conclude that the foundation may not withhold information relating to employees of the district under section 552.117.

Section 552.137 of the Government Code states in part that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. You seek to withhold the highlighted e-mail addresses in Exhibit D under section 552.137. We note that one of the e-mail addresses in question falls within the scope of section 552.137(c) and may not be withheld. We have marked that information. We conclude that the district must withhold the rest of the highlighted e-mail addresses under section 552.137 of the Government Code unless the owner of an e-mail address has affirmatively consented to its public disclosure.

In summary, the foundation is a "governmental body" for the purposes of the Act, and therefore the records of the foundation are subject to the Act. Except for the e-mail address that we have marked for release, the foundation must withhold the highlighted e-mail addresses in Exhibit D under section 552.137 of the Government Code unless the owner of an e-mail address has consented to its disclosure. The rest of the submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

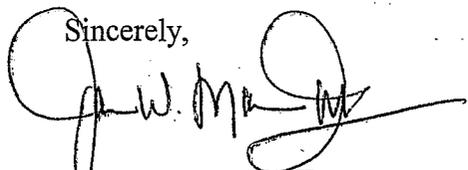
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 312427

Enc: Submitted documents

c: Ms. Carolyn Boyle  
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(w/o enclosures)