



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2009

Ms. Julie Fort
Strasburger & Price, L.L.P.
2801 Network Boulevard, Suite 600
Frisco, Texas 75034

OR2009-01087

Dear Ms. Fort:

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# 333411.

The Plano Economic Development Board, Inc. (the "board"), which you represent, received a request for "the first two years of 990 filings as a 501(c)(3) and supportive documentation." You contend that the board is not a "governmental body" subject to the Act. Alternatively, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your claims and reviewed the submitted representative sample of information.¹

We begin by addressing your assertion that the board is not a governmental body, and therefore its records are not subject to the Act. 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[.]" Gov't Code § 552.003(1)(A)(xii). The phrase "public funds" means funds of the state or of a governmental subdivision of the state.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Id. § 552.003(5). This office has previously ruled that the board constitutes a governmental body under section 552.003(1)(A)(xii) with respect to the services it performs under its contract with the City of Plano (the "city"). See Open Records Letter Ruling No. 2007-16399 (2007). However, as you note, in certain instances, based on our examination of the specifics of a situation, this office will find that only records related to those parts of an entity directly supported by public funds are subject to the Act. See Open Records Decision No. 602 at 5 (1992) (determining that records of Dallas Museum of Art pertaining to private collection of artwork for which City of Dallas had provided no direct support were not subject to 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. See Open Records Decision No. 228 (1979) (finding that private, nonprofit corporation chartered for purpose of promoting interests of Dallas-Fort Worth metropolitan area was governmental body). In support of your claim that the board is not a governmental body and the requested information is not subject to the Act in this instance, you direct our attention to the lists of specified services to be performed in the 1986 and 1987 contracts between the city and the board.

Upon review, we find that the submitted information, including the lists of specified services to be performed, concerns matters related to the economic development activities the board performs for the city. The submitted information also demonstrates the closeness of the relationship between the city and the board and the nature of the general support provided by the city to the board. Furthermore, the contract provisions demonstrate that the city exercises considerable control over the funds paid to the board under the contracts. Thus, the contracts and other submitted information indicate that the city provides general support for the operation of the board and that the city and board share a common purpose and objective, namely the economic development of the city. See *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988); Open Records Letter Ruling No. 2007-16399 (2007).

Based on the totality of these facts, we conclude that the board in its entirety constitutes a governmental body within the meaning of section 552.003 and that all of the requested information is subject to the Act. See Open Records Decision No. 621 at 5 (1993) (determining that entire Arlington Economic Development Foundation constitutes governmental body where such foundation had received both city funding and private contributions). Accordingly, we will address the exception to disclosure you have raised pursuant to section 552.301 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that another statute makes

confidential. Federal tax returns and tax return information are confidential under section 6103 of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a); *see also id.* § 6103(b)(1)-(2) (defining “return” and “return information”). However, section 6104 of title 26 provides in relevant part as follows:

(d) Public inspection of certain annual returns[.]

(1) In general. In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a)

(A) a copy of

(i) the annual return filed under section 6033 . . . by such organization,

...

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .

(B) upon request of an individual made at such principal office . . . a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

...

(2) 3-year limitation on inspection of returns.— Paragraph (1) shall apply to an annual return filed under section 6011 or 6033 only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

Id. § 6104(d)(1)-(2); *see* 26 C.F.R. § 301.6104(d)-1(a). Thus, a section 501 tax-exempt organization must generally make its annual information returns available for public inspection for a period of three years from the last day prescribed for filing. The public disclosure requirement of section 6104(d) for a section 501(c) or (d) organization also applies to certain other specified tax filings in addition to the annual return. *See* 26 U.S.C. § 6104(d)(1)(A). In this instance, the information at issue consists of Form 990s filed

in 1986 and 1987. We determine that the three-year inspection period has elapsed regarding the submitted information, and the requestor does not have a right of inspection under section 6104. The information at issue, therefore, must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. *See id.* § 6103(a).

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 more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

Ref: ID# 333411

Enc. Submitted documents

c: Requestor
(w/o enclosures)