



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2009

Mr. Francis J. Coleman, Jr.
General Counsel to
HAS Development Corporation
1803 South Boulevard
Houston, Texas 77098

OR2009-12960

Dear Mr. Coleman:

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# 355024.

The HAS Development Corporation ("HASDC") received two requests for documents and communications between HASDC and Tomlin Investments related to a potential airport in Denton County, Texas. HASDC asserts it is not a governmental body subject to the Act. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

The Act applies to "governmental bodies," as that term is defined in section 552.003(1)(A) of the Government Code. According to that section, a "governmental body" is

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 an entity is a governmental body for 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, 360-362 (Tex. App.—Waco 1998, pet. denied). Further, in Attorney General Opinion JM-821 (1987), this office concluded that “the primary issue in determining whether certain private entities are governmental bodies under the [predecessor of 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 (1987).

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 JM-821 at 3; Open Records Decision No. 621 at 9 (1993). Other aspects of a contract or relationship may make it more likely that a particular entity will fall within the Act. JM-821 at 3. 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 may bring the private entity within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code. See *id.*; ORD 621 at 11 n.10. Some entities will be considered governmental bodies if they provide services traditionally provided by governmental bodies. *Id.* 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.*

HASDC is a non-profit corporation the stated purpose of which is to benefit the City of Houston (the “city”) and the Houston Airport System (the “system”). HASDC has entered into contracts with the system, in which the system agrees to provide services in exchange for monetary consideration from HASDC. Specifically, HASDC pays the system 180% of the cost of services provided, resulting in a substantial profit margin to the system. HASDC then sells these services to third parties, such as foreign airports or private organizations, who stand to benefit from the system’s expertise. Accordingly, HASDC is funded by these third parties, not by the city or the system. Although HASDC receives services from the system to aid in HASDC’s support of its third-party clients, it provides consideration for such services in the form of monetary payments; rather than receiving funds from the city or the system, HASDC provides funds to these public entities. Further, although HASDC often works in concert with the system, we do not find that HASDC and the system share a common purpose and objective such that an agency-type relationship is created, or that the services provided to third parties by HASDC are traditionally provided by cities or municipal airport systems. *Id.* Thus, upon review, we find HASDC is not a governmental body subject to the Act. Therefore, HASDC need not respond to the present requests for its information.

This letter ruling is limited to the particular information 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 information 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Davis", written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 355024

Enc. Submitted documents

cc: Requestor
(w/o enclosures)