



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2011

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Ms. Melissa Ball
Acting Director
Brazos Animal Shelter, Inc.
2207 Finfeather Road
Bryan, Texas 77801

OR2011-04135

Dear Ms. Ball:

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# 412245.

The Brazos Animal Shelter, Inc. (the "shelter") received a request for information relating to the collection, auditing, and disposition of fees for registration of dogs and cats in Brazos County ("the county") during a specified time interval. You contend the shelter is not a governmental body subject to the Act. You also contend the requested information is not public information subject to disclosure under the Act. We have considered your arguments.

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" means funds of the state or of a governmental subdivision of the state. *See id.* § 552.003(5).

Both the courts and this office have previously considered the scope of the definition of "governmental body" under the Act and its statutory predecessor. In *Kneeland v. Nat'l Collegiate Athletic Ass'n*, 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” 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 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 Kneeland*, 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 they received from their member public institutions. *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. *Id.* 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 under the Act of the Dallas Museum of Art (the "DMA"). The DMA was a private, nonprofit corporation that had contracted with the City of Dallas (the "city") to care for and preserve an art collection owned by the city and to maintain, operate, and manage an art museum. *Id.* 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 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 "the city 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 cannot be known, specific, or measurable." *Id.* at 5. Thus, we concluded the city provided general support to the DMA facilities and operation, making the DMA a governmental body to the extent 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 note 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 involving 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 indicates a common purpose or objective or 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. Structuring a contract that involves public funds to provide a formula to compute a fixed amount of money for a fixed period of time will not automatically prevent a private entity from constituting a "governmental body" under section 552.003(1)(A)(xii). 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 inform us the shelter is a Texas non-profit corporation. You also inform us the county has a pet registration program established under section 826.031 of the Health and Safety Code. You state the county contracts with the shelter to administer the pet registration program and permits the shelter to retain the fees collected to defray the cost of administering the program. You contend the shelter is not a governmental body under the Act, for purposes of the pet registration program, because the shelter's contract with the county imposes specific and definite obligations on the shelter to provide a measurable amount of services in exchange for a specific sum of money. Having considered your representations, we note section 826.031 of the Health and Safety Code authorizes the commissioners court of a county to adopt ordinances or rules requiring the registration of each dog and cat within the county's jurisdiction. *See* Health and Safety Code § 826.031(a); *see also* Attorney General Opinion GA-0367 at 2 (2005). Thus, the registration of dogs and cats is a local governmental function. *See generally* Civ. Prac. & Rem. Code § 101.0215(a)(33) (listing animal control as governmental function to be exercised in interest of general public); 3 Tex. Jur. 3d Animals § 19 *et seq.* (2004) (discussing local governmental authority to regulate domesticated animals); Attorney General Opinion GA-0466 (2006) (discussing a county's statutory authority to establish rabies control program). You have provided a copy of a comprehensive "Brazos County Animal Control Ordinance" adopted December 8, 2009. Section 4.1 of the ordinance, "Animals to be Licensed," provides that registration of all cats and dogs will be required and establishes an annual registration fee. Section 3.1 of the ordinance designates the county sheriff as the local animal control authority and creates the position of animal control officer to assist in supervising the implementation, administration, and enforcement of the ordinance. Thus, the county's ordinance establishes pet registration as one of its animal control functions and contemplates overall county supervision of pet registration and other aspects of animal control.

We also note section 826.016 of the Health and Safety Code authorizes the commissioners court of a county to enter into contracts or agreements with public or private entities to carry out activities authorized or required under chapter 826 of the Health and Safety Code. *See* Health & Safety Code § 826.016. We note you were unable to provide this office with a written agreement or other documentation of the shelter's contract with the county. In the absence of any such documentation, we are unable to ascertain the specific details of the shelter's contractual relationship with the county. We generally understand, however, that the shelter collects information and fees from veterinarians who register pets, maintains the registration records, and retains the registration fees. Thus, in contracting with the county to administer the pet registration program, the shelter has undertaken to perform, and is

performing, a function of county government. Accordingly, we believe the shelter's contract with the county to administer the pet registration program establishes a common purpose and objective and "create[s] an agency-type relationship" between the shelter and the county by delegating to the shelter a function the county would ordinarily perform. Likewise, in administering the pet registration program, the shelter collects and is permitted to retain registration fees that would otherwise be payable to the county. *See id.* § 826.031(c) (authorizing enforcing agency to collect fee set by ordinance for registration of each dog or cat and to retain fees collected to help defray costs of administration). Thus, pursuant to section 826.031, the shelter's retention of the registration fees is predicated on its performance of a function for which the county otherwise has statutory responsibility. Thus, we believe the shelter's collection of registration fees pursuant to its contract with the county constitutes receipt of "public funds" within the meaning of section 552.003 of the Government Code. *See Gov't Code* § 552.003(a)(xii); *see also* Open Record Decision Nos. 601 at 2 (1992) (funds held by El Paso Housing Finance Corporation, including fees collected from applicants, were public funds), 268 (1981) (amounts collected by city housing authority from rentals assumed character of "public moneys" upon payment to authority). We therefore conclude that for purposes of its administration of the county's pet registration program, the shelter is a governmental body for purposes of section 552.003. *See Gov't Code* § 552.003; *Kneeland v. Nat'l Collegiate Athletic Ass'n*, 850 F.2d at 228.

You also contend the requested information is not public information for purposes of section 552.002 of the Government Code. The Act is applicable to "public information," which section 552.002 defines as consisting of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Additionally, the Act encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). In this instance, the requestor seeks access to information pertaining to the collection, auditing, and disposition of fees for the registration of dogs and cats in the county. This office has said that if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or

maintained by the agent is subject to section 552.002. *See* Open Records Decision No. 518 at 3 (1989) (addressing statutory predecessor to Gov't Code § 552.002); *see also* Open Records Decision Nos. 585 at 3 (1991) (private corporation would not have been able to assemble requested list of applicants for position of city manager were it not for contract between city and corporation), 437 at 3 (1986) (in collecting requested information, both attorney and contractor were in effect carrying out task delegated to them which would otherwise have been left to governmental body itself). Accordingly, we conclude the requested information is public information for purposes of section 552.002. Therefore, the shelter must release the requested information unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002, .006, .021.

Section 552.301 of the Government Code prescribes the procedures a governmental body must follow if it seeks to withhold requested information from required public disclosure. *See id.* § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish the date of receipt; and (4) the specific information the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

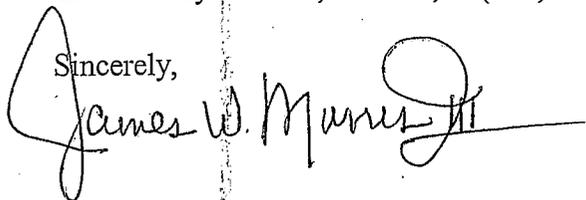
You inform us the shelter received the instant request for information on December 31, 2010; therefore, the shelter's deadlines under subsections 552.301(b) and 552.301(e) were January 14 and January 24, respectively. As of the date of this decision, the shelter has not submitted to our office any information responsive to this request for information. Thus, the shelter has not fully complied with section 552.301, and the requested information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You contend the requested records contain confidential information. But as you have not submitted any of the requested information to this office, we have no basis to conclude any of the information is confidential by law. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. If you

believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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 that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal line extending to the right.

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

JWM/em

Ref: ID# 412245

c: Requestor

SC MAR 14 2016
At 8:30 A.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-11-001186

BRAZOS ANIMAL SHELTER, INC.	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	419th JUDICIAL DISTRICT
HONORABLE GREG ABBOTT,	§	
ATTORNEY GENERAL OF THE	§	
STATE OF TEXAS,	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

AGREED ORDER OF DISMISSAL

This cause is an action under the Public Information Act (PIA), Texas Government Code Chapter 552. Plaintiff Brazos Animal Shelter, Inc., and Defendant Ken Paxton, Attorney General of Texas,¹ agree that this matter should be dismissed pursuant to PIA section 552.327 on the grounds that the requestor had abandoned his request for information. *See* Tex. Gov't Code § 552.327. A court may dismiss a PIA suit under section 552.327 when all parties agree to dismissal and the Attorney General determines and represents to the Court that the requestor has voluntarily withdrawn the request for information in writing or has abandoned the request. *Id.* The Attorney General represents to the Court that the requestor, Mr. Charles F. Brooks, has abandoned his request for information. Accordingly, the Shelter is not required to disclose the requested information subject to release in Letter Ruling OR2011-04135. The parties agree to the entry of this Agreed Order of Dismissal.

The Court is of the opinion that entry of an agreed dismissal order is appropriate.

¹ Ken Paxton is now the proper defendant in the lawsuit because he holds the office of Attorney General of Texas.



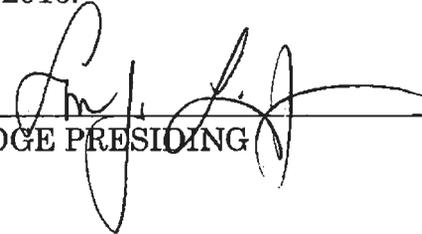
It is THEREFORE, ORDERED, ADJUDGED and DECREED that this cause is DISMISSED in all respects;

All court costs and attorney fees are taxed to the party incurring same;

All other requested relief not expressly granted herein is denied;

This order disposes of all claims between the parties and is final judgment.

Signed this 14th day of March, 2016.


JUDGE PRESIDING

AGREED:



PATRICIA MERONOFF

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