



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2012

Mr. Charles H. Jeffrey
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P.O. Box 223667
Dallas, Texas 75222-3667

OR2012-04285

Dear Mr. Jeffrey:

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# 448439.

Main Station Duncanville, Ltd. ("Main Station"), which you represent, received a request for capital accounts for all partners, names of and interests held by each of the partners, the partnership's income tax returns and balance sheets during a specified time period, and documentation regarding the expenditure of funds received from the Duncanville Community and Economic Development Corporation (the "Duncanville CEDC"). You argue Main Station is not a governmental body subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.110, 552.131, and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party 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. You assert Main Station 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,

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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 have previously 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 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; see Open Records Decision No. 1 (1973). Rather, the *Kneeland* court noted 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.”

Kneeland, 850 F.2d at 228. 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 *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 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. 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* ORD 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, “[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe this provision places the various governmental bodies which have entered into the contract in the position of ‘supporting’ the operation of the [c]ommission with public funds within the meaning of [the predecessor to section 552.003].” *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* 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 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 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 the City of Dallas 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 additionally 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 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 Main Station is a limited partnership. You inform us the Duncanville CEDC is a limited partner in Main Station. We understand the Duncanville CEDC is a Type B corporation under the Texas Development Corporation Act (the “DCA”). The DCA was codified as subtitle C1 of title 12 of the Local Government Code, effective April 1, 2009. *See id.* §§ 501.001-505.355. Prior to the codification, a corporation was referred to as a “4A corporation” or a “4B corporation” in reference to the particular section of the DCA that governed a corporation’s creation and authority. *See* Act of May 27, 1989, 71st Leg., R.S., ch. 877, § 2, sec. 4A, 1989 Tex. Gen. Laws 3871, 3871-73 (providing for 4A corporations), *and* Act of Mar. 21, 1991, 72nd Leg., R.S., ch. 11, § 2, sec. 4B, 1991 Tex. Gen. Laws 37, 37-39 (providing for 4B corporations), *both repealed by* Act of May 15, 2007, 80th Leg., R.S., ch. 885, § 3.78, 2007 Tex. Gen. Laws 1905, 2163. Now, the DCA as codified in the Local Government Code refers to a “Type A corporation” and a “Type B corporation.” Local Gov’t Code § 501.002(15), (16).

As previously noted, you indicate the Duncanville CEDC is a Type B corporation under the DCA. A municipality may adopt a sales and use tax for the benefit of a Type B corporation as authorized by section 505.251 of the Local Government Code. *Id.* § 505.251. Further, pursuant to section 501.072 of the Local Government Code, the board of directors of a Type B corporation is subject to the Act. *See* Local Gov’t Code § 501.072. We note in 1995, the City of Duncanville (the “city”) adopted a sales and use tax, as authorized by the DCA, and created the Duncanville CEDC to oversee the use of the funds. Thus, the Duncanville CEDC is a Type B corporation that spends or that is supported in whole or in part by public funds for purposes of section 552.003(1)(A)(xii) of the Government Code. Accordingly, we find the Duncanville CEDC is a governmental body for purposes of the Act.

Under the DCA, the Duncanville CEDC may contract with a private corporation to carry out an industrial development program or objective, or assist with the development or operation of an economic development program or objective consistent with the purposes and duties specified by the DCA. *See id.* § 505.102. In this instance, you state Main Station is a private limited partnership created for the purpose of the acquisition, construction, and leasing of a previously vacant property located in Duncanville, Texas. As noted above, the Duncanville CEDC is a limited partner in Main Station, with a 32% interest in the partnership. Moreover, the submitted Agreement of Limited Partnership for Main Station Duncanville, Ltd. (the “agreement”) reveals the Duncanville CEDC provided Main Station funding upon entering the agreement, for a total amount of \$805,093. You further state the Duncanville CEDC has since provided an additional sum of money, in the amount of \$135,000, to Main Station for continuing improvements to the subject property. Thus, we find Main Station receives public funds in the form of the Duncanville CEDC’s cash contributions and conveyance of real property interests.

As noted above, 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. Section 6.1 of Article VI of the agreement provides the Duncanville CEDC shall contribute specified sums to Main Station; however, the agreement also provides any funds not expended for those specified purposes shall be contributed to Main Station for use for "other [o]perating [e]xpenses." Agreement art. VI, § 6.1. Operating expenses are defined in Article I of the agreement as, "The costs, expenses, or charges incurred by [Main Station] in holding, owning and operating the [property], including without limitation, . . . all other expenses reasonably incurred in the day-to-day operation of [Main Station]'s business." *Id.* art. I. Thus, we find the public funds received by Main Station were provided for the general support of Main Station. Moreover, section 7.1 of Article VII of the agreement provides, "the income, gains, losses, deductions, and credits" of Main Station "shall be shared by the [p]artners in accordance with their respective percentage [i]nterests[.]" *Id.* art. VII, § 7.1. Further, section 9.2(A) of Article IX of the agreement gives the Duncanville DEDC a right of inspection "records required to be maintained under the [Texas Revised Limited Partnership] Act and such other information regarding the business, affairs, and financial condition of [Main Station.]" *Id.* art. IX, § 9.2(A). In addition, section 9.6 provides the Duncanville DEDC the right to have an audit of Main Station's books conducted, *id.* art. IX, § 9.6, and section 10.1 of Article X of the agreement provides any budget prepared for Main Station shall become the approved budget after discussion, revision, and approval by the Duncanville CEDC. *Id.* art. X, § 10.1. Thus, we find the contractual relationship between the parties and the provisions of the limited partnership agreement evidence a common purpose and objective such that an agency-type relationship is created. *See* Open Records Decision No. 621 at 7 (1993). Based on our review, therefore, we find Main Station falls within the definition of a "governmental body" under section 552.003(1)(A)(xii) of the Act. Therefore, the submitted information is subject to the Act and must be released unless it is subject to an exception to public disclosure under the Act. Accordingly, we will consider your arguments against disclosure of the submitted information.

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 exception encompasses information other statutes make confidential. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" *See* 26

U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d1111 (4th Cir. 1993). Thus, the submitted Form 1065, which you have marked as Exhibit 2, constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.²

Next, you contend portions of the remaining information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See Gov’t Code § 552.110(a)-(b)*. We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider your arguments under section 552.110.

You also argue the remaining information is protected by section 552.131(b) of the Government Code, which relates to economic development information and provides, in relevant part,

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov’t Code § 552.131(b). Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See id.* § 552.131(b). In this instance, you argue “[a] request concerning the grant to Main Station should be directed towards the governmental body that issued the grant, which in this matter is the [Duncanville CEDC].” However, you provide no arguments concerning the applicability of section 552.131(b) to the submitted information. Accordingly, we find you have failed to demonstrate the applicability of section 552.131(b) to any portion of the submitted information, and it may not be withheld on that basis.

You also argue portions of the remaining information are subject to section 552.136 of the Government Code, which provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). You contend “batch numbers” and names of banks are subject to section 552.136. Upon review, we find you have failed to demonstrate how

²As our ruling is dispositive for this information, we need not address your remaining argument under section 7213 of title 26 of the United States Code.

any portion of the remaining information consists of a credit card, debit card, charge card, or access device number for purposes of section 552.136. Accordingly, Main Station may not withhold any portion of the remaining information under section 552.136 of the Government Code.

In summary, we find Main Station falls within the definition of a "governmental body" under the Act. Main Station must withhold the submitted Form 1065, which you have marked as Exhibit 2, under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The remaining submitted information must be released.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 448439

Enc. Submitted documents

c: Requestor
(w/o enclosures)