



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2014

Mr. Don C. Dennis
Counsel for the Lubbock Health Facilities Development Corporation
Boerner, Dennis & Franklin, PLLC
P.O. Box 1738
Lubbock, Texas 79408

OR2014-05378

Dear Mr. Dennis:

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# 518340.

The Lubbock Health Facilities Development Corporation (the "corporation"), which you represent, received a request for all financial records relating to a specified time period. You claim the corporation is not a governmental body and, thus, the requested information is not public information under the Act. 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 (providing that interested party may submit comments stating why information should or should not be released).

As defined by section 552.003 of the Government Code, the term "governmental body" includes:

(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality; [and]

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

...

(xii) 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)(iv), (xii). 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). With regard to subsection 552.003(1)(A)(iv) of the Government Code, we note the corporation is a non-profit corporation created pursuant to Chapter 221 of the Health & Safety Code. *See* Health & Safety Code § 221.011. A corporation formed under this chapter must be created by a “sponsoring entity.” *Id.* § 221.011(a); *see also id.* § 221.003(10) (defining “sponsoring entity” as a municipality, county, or hospital district). We note a sponsoring entity may not delegate any sovereign powers of the state or the sponsoring entity, including the powers of taxation or eminent domain, or police power, to a corporation created under this chapter. *Id.* § 221.030(c). In addition, we note section 221.066(b) of the Health and Safety Code provides that the bonds issued by a corporation formed under this chapter “are not an obligation or a pledge of the faith and credit of the state, a sponsoring entity, or other political subdivision or agency of the state.” *Id.* § 221.066(b). Thus, we find the corporation is not a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality and does not meet the definition found at subsection 552.003(1)(A)(iv) of the Government Code. *See* Attorney General Opinion JM-794 (1987) (finding Health Facilities Development Corporations formed under predecessor statute not governmental bodies subject to the Open Meetings Act). We therefore examine whether the corporation meets the definition of a governmental body found at subsection 552.003(1)(A)(xii), quoted above. We note that public funds as that term is used in subsection 552.003(1)(A)(xii) are “funds of the state or of a governmental subdivision of the state.” Gov’t Code § 552.003(5).

Section 221.011(c) of the Health and Safety Code states a “sponsoring entity may not lend its credit or grant public money or other thing of value in aid of a development corporation.” Health & Safety Code § 221.011(c). You inform us the corporation has never received any grants, gifts, or funds from any governmental or public entity. Our review of the enabling ordinance, the corporation’s bylaws, and the corporation’s articles of incorporation does not indicate the corporation is supported by public funds. After consideration of your arguments and review of the documentation provided, we are unable to determine that the corporation receives public funding or services to the extent necessary to make it a governmental body under the Act. *See* Gov’t Code § 552.003(1)(A)(xii); Attorney General Opinion MW-373; *see also* ORD 228; *cf. Blankenship*, 975 S.W.2d at 362; Open Records Decision Nos. 602, 569 (1990) (Fiesta San Antonio Commission that was designated by city ordinance as fiesta planning agency but received no public funds held not governmental

body), 317 (1982) (mayor's task force that examined city governmental structure but did not spend and was not supported by public funds held not governmental body). Consequently, we conclude the corporation is not a governmental body subject to the Act. Therefore, the corporation need not respond to the present request 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 518340

Enc. Submitted documents

c: Requestor
(w/o enclosures)