



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2014

Mr. Darrell J. Guthrie  
Counsel for North & East Lubbock Community Development Corporation  
Mullin, Hoard & Brown, L.L.P.  
P.O. Box 2585  
Lubbock, Texas 79408-2585

OR2014-06465

Dear Mr. Guthrie:

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# 520282.

The North & East Lubbock Community Development Corporation (the "NELCDC"), which you represent, received a request for public notices of all meetings of the NELCDC for a specified period of time, copies of all records of micro loans made by the NELCDC, and copies of all communications between a named individual and any member of the board of directors during a specified employment period.<sup>1</sup> You inform us the NELCDC has no information responsive to some of the request.<sup>2</sup> You claim the NELCDC is not a governmental body and, thus, the remaining requested information is not subject to the Act. In the alternative, you claim some of the submitted information is excepted from disclosure under sections 552.105, 552.131, and 552.137 of the Government Code. We have

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<sup>1</sup>We note the NELCDC received clarification regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

considered your arguments and reviewed the submitted representative sample of information.<sup>3</sup>

The Act applies to “governmental bodies” as that term is defined in section 552.003(1)(A) of the Government Code. 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 term “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. HM-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

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<sup>3</sup>We 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.

because both provided specific, measurable services in return for those funds. *See id.* at 230-31. 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 229-231. The *Kneeland* court concluded, although the NCAA and SWC received public funds from some of their members, neither entity was a “governmental body” for purposes of the Act because the NCAA and the 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 228 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 that this provision places the various governmental bodies which entered into the contract in the position of ‘supporting’ the operation of the Commission with public funds within the meaning of [the predecessor to section 552.003].” *Id.* Accordingly, the commission was 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 a 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.* However, those areas for which the city had not provided support were not 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 that involves 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 contact 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 the NELCDC is a private, not-for-profit corporation organized under section 501(c)(3) of the Internal Revenue Code. You inform us the NELCDC has entered into a Grant Management Agreement (the “agreement”) with the City of Lubbock (the “city”) to provide services to the city, including undertaking housing development and community economic development. The agreement states the NELCDC shall be responsible for creating, managing, operating, and supervising programs and activities for the purpose of promoting, assisting, and enhancing economic development in the north and east areas of the city. The agreement provides the city will provide funds to the NELCDC, to be made in quarterly payments over the lifetime of the agreement, and the funds must be kept in a segregated account and not commingled with any other NELCDC funds. Further, the agreement states these funds may be spent for the day-to-day operations of the NELCDC. We believe these provisions place the city in the position of supporting the operation of the NELCDC. Additionally, we note the agreement provides that the NELCDC must appoint a city employee as executive director to provide oversight and assistance to the NELCDC in performing the agreement.

Upon review, we conclude the NELCDC is a corporation that is supported in part by public funds. Furthermore, based on our review of the submitted agreement, we conclude the city and the NELCDC share a common purpose and objective such that an agency-type relationship is created. *See* Open Records Decision No. 621 at 9 (1993); *see also* Local Gov’t Code § 380.001(a), (b) (providing that governing body of municipality may establish and provide for administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of municipality, to

promote state or local economic development and to stimulate business and commercial activity in municipality). Accordingly, we conclude the NELCDC falls within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code to the extent it is supported by city funds.

However, an organization is not necessarily a “governmental body” in its entirety. “[T]he 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” is a governmental body. Gov’t Code § 552.003(1)(A)(xii); *see also* ORD 602 (only records of those portions of DMA that were directly supported by public funds are subject to Act). Therefore, only those records relating to those parts of the NELCDC’s operations that are directly supported by public funds are subject to the disclosure requirements of the Act. We note Exhibits D and E relate to those parts of the NELCDC’s operations that are directly supported by city funds. Accordingly, we will address your arguments against disclosure of this information.

You state a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-04140 (2014). Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the NELCDC must continue to rely on Open Records Letter No. 2014-04140 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Section 552.105 excepts from disclosure information relating to the following:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov’t Code § 552.105. We note this provision is designed to protect a governmental body’s planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. A governmental body may withhold information that “if released, would impair or tend to impair [its] ‘planning and negotiating position in regard to particular

transactions.”” Open Records Decision Nos. 357 at 3, 222 (1979). The question of whether specific information, if publicly released, would impair a governmental body’s planning and negotiating position with regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body’s good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564. You state none of the emails and documents in the submitted information address appraisals or the purchase of real or personal property for a public purpose prior to the formal award of contracts for the property. Based on your representations, we conclude the NELCDC has failed to establish the applicability of section 552.105 of the Government Code to the submitted information and the NELCDC may not withhold any of the submitted information on that basis.

You also raise section 552.131(b) of the Government Code for portions of the information in Exhibit E. Section 552.131 relates to economic development information and provides in 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). You inform us the information at issue consists of communications regarding a loan for leasehold improvements with a prospective tenant. However, upon review, we find you have not demonstrated how any portion of the information at issue reveals financial or other incentives that are being offered to a business prospect. Thus, we conclude the NELCDC may not withhold any of the information at issue under section 552.131(b) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue is not of types excluded by subsection (c). You state no member of the public has affirmatively consented to the NELCDC disclosing his or her e-mail address. Therefore, the NELCDC must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code.<sup>4</sup>

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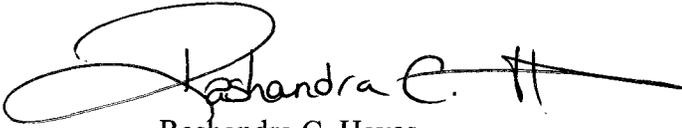
<sup>4</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the NELCDC must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code. The remaining 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,

A handwritten signature in black ink, appearing to read "Rashandra C. Hayes", with a large, stylized flourish at the end.

Rashandra C. Hayes  
Assistant Attorney General  
Open Records Division

RCH/dls

Ref: ID# 520282

Enc. Submitted documents

c: Requestor  
(w/o enclosures)