



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2014

Ms. Debra L. Stephens
Owner and Laboratory Manager
Alamo Forensic Services, LLC
7340 Blanco Road, Suite 600
San Antonio, Texas 78216

OR2014-09869

Dear Ms. Stephens:

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# 524191.

Alamo Forensic Services, LLC ("AFS") received a request for information in an electronic database pertaining to a specified intoxilyzer number during a specified time frame.¹ AFS asserts it is not a "governmental body" subject to the Act. In the alternative, it claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The Act defines "governmental body" in pertinent part as

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[.]

¹AFS informs us the request was addressed to a company named Bexar Breath Testing, which performed the same services as AFS. However, AFS explains it is responsible for and "contractually agreed to provide" the records of that company.

Id. § 552.003(1)(A)(xii). “Public funds” means “funds of the state or of a governmental subdivision of the state.” *Id.* § 552.003(5). “Public funds” from a state or governmental subdivision of the state can be in various forms and can include free office space, utilities and telephone use, equipment, and personnel assistance. *See* Att’y Gen. Op. No. MW-373 (1981).

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). In Attorney General Opinion JM-821 (1987), this office concluded “the primary issue in determining whether certain private entities are governmental bodies under 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. Thus, the entity would be considered a governmental body subject to the Act if it spends or is supported in whole or in part by public funds.

Both the courts and this office previously have 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 (discussing 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, *quoting* [Open Records Decision No.] 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 id.* at 230-31. Both the NCAA and the SWC were associations made up of both private and public universities. *Id.* at 226. 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. *Id.* at 231. Rather, the NCAA and the SWC provided "specific and gaugeable services" in return for the funds that they received from their member public institutions. *See id.*; *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 have 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 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.*

AFS informs us it is an independent forensic laboratory that has contracts with the City of San Antonio (the "city") and Bexar County (the "county") to provide breath alcohol testing services. AFS has provided us copies of these contracts. We note the contracts with both the city and county specify that in performing its services, AFS is an independent contractor. AFS also states it serves as the custodian of records generated in Bexar County as part of the Texas Breath Alcohol Testing Program that is administered by Texas Department of Public Safety ("DPS"). *See generally* 37 T.A.C. ch. 19 (breath alcohol testing regulations). *See also id.* § 19.6 (requirements for technical supervisor certification). AFS explains the requested information is located in a breath alcohol testing database, which is transmitted by upload to the Office of Science Director of DPS's Breath Alcohol Testing Bureau. However, it also asserts DPS is the owner of the requested database work product and AFS is neither the creator nor administrator of that database. Based on these representations and our review of the submitted contracts, we find the submitted contracts impose specific and definite obligations on AFS to provide a measurable amount of services to the city and the county in exchange for specific sums of money, as would be expected in typical arms-length transactions between a vendor and purchaser. Therefore, we conclude AFS is not a governmental body under the Act. *See* Gov't Code § 552.003(1)(A); *Kneeland*, 850 F.2d at 229-31; ORD 228 at 2. Accordingly, AFS is not required to comply with this request for information.²

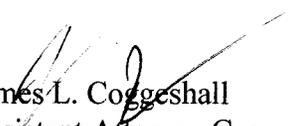
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

²As our ruling is dispositive, we do not address the AFS's arguments to withhold this information under the Act. We also do not address whether the requestor can secure the requested information from the city, the county, or DPS.

[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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 524191

Enc. Submitted documents

c: Requestor
(w/o enclosures)