



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2014

Ms. Amanda Craig
President
Humane Society of the New Braunfels Area
3353 Morningside Drive
New Braunfels, Texas 78132

OR2014-18676

Dear Ms. Craig:

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# 539819.

The Humane Society of the New Braunfels Area (the "humane society") received multiple requests from the same requestor for information pertaining to the number of animals euthanized during a specified period of time, specified information relating to the euthanasia drugs used by the humane society, information pertaining to pest control, a specified income tax return, and specified financial information.¹ You claim the humane society is not a governmental body and, thus, the requested information is not subject to the Act. We have considered your argument.

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).

¹As you have not submitted copies of the requests, we take our descriptions from the requestor's correspondence.

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 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 represent to this office the humane society is a non-profit section 501(c)(3) corporation that provides animal services to Comal County (the “county”) and the cities of New Braunfels and Marion (collectively, the “cities”). You have provided copies of agreements with the county and the cities. You contend the humane society is not a governmental body under the Act because the humane society’s contracts with the county and the cities impose specific and definite obligations on the humane society to provide a measurable amount of services in exchange for specific sums of money. We note the humane society’s contract with the City of New Braunfels (the “New Braunfels contract”) authorizes the humane society to issue citations to animal owners claiming impounded animals. The New Braunfels contract provides the humane society may issue citations for dogs and cats without current rabies vaccinations, dogs and cats without a current New Braunfels license, dogs and cats running at large, and interference with an animal control officer or humane society personnel, when harassed or abused in the performance of their duties. Further we note the New Braunfels contract provides the humane society will work with city staff to “develop and implement a program to address and enhance the animal adoption rate, reduce the euthanasia rate[,] and further promote animal care and custody.” We find the issuance of citations and development and implementation of a program of the type in the New Braunfels contract are traditionally governmental functions. *See* Open Records Decision No. 621 at 7 n.10 (1993) (quoting *Kneeland v. Nat’l Collegiate Athletic Ass’n*, 850 F.2d at 228) (“[S]ome entities . . . will be considered governmental bodies if they provide ‘services traditionally provided by governmental bodies.’”). Accordingly, on review, we find the humane society’s contractual affiliations with the City of New Braunfels to issue citations and implement a program establishes a “common purpose or objective or . . . creates an agency-type relationship” between the humane society and the city of New Braunfels by authorizing the humane society to perform functions a governmental entity would otherwise perform. *See* Attorney General Opinion JM-821 at 3; ORD 621 at 7 n.10. We therefore conclude the humane society is a “governmental body,” for purposes of section 552.003(1)(A)(xii) of the Government Code, to the extent the humane society issues the specified types of citations or develops or implements “a program to address and enhance the animal adoption rate, reduce the euthanasia rate[,] and further promote animal care and custody.”

We next note a private entity is not necessarily a “governmental body” in its entirety by reason of a contractual relationship with a governmental entity. Rather, “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” is a governmental body. Gov’t Code § 552.003(1)(A)(xii); *see also* ORD 602 (only the records of those portions of the Dallas Museum of Art that were directly supported by public funds are subject to the Act). Thus, the humane society’s records are subject to the Act only to the extent they

pertain to the issuance of the specified types of citations or the development or implementation of “a program to address and enhance the animal adoption rate, reduce the euthanasia rate[,] and further promote animal care and custody.” However, we find the remaining contractual duties impose specific and definite obligations on the humane society to provide a measurable amount of services to the county and the cities in exchange for specific sums of money. Therefore, we conclude information pertaining to these remaining obligations is not public information subject to the Act.

In this instance, the requests are for information pertaining to the number of animals euthanized during a specified period of time, specified information relating to the euthanasia drugs used by the humane society, information pertaining to pest control, a specified income tax return, and specified financial information. To the extent the requested information is related to the issuance of the specified types of citations or the development or implementation of “a program to address and enhance the animal adoption rate, reduce the euthanasia rate[,] and further promote animal care and custody[,]” the requested information is public information subject to the Act and must be released unless it falls within the scope of an exception to disclosure.

Next, we must address the humane society’s obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov’t Code § 552.301(e). As of the date of this ruling, you have not submitted copies of the written requests for information or a representative sample of the specific information requested. Therefore, we find the humane society has failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302);

see also Open Records Decision No. 630 (1994). We note that a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). However, as you raise no exceptions to the disclosure of the requested information that is subject to the Act, it must be released to the requestor. If you believe the requested information that is subject to the Act is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.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/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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 539819

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We do not address whether the requestor can secure the requested information from the county or cities.