



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 3, 2015

Ms. Angelique Weaver  
Counsel for North & East Lubbock Community Development Corporation  
Mayfield Law Firm, L.L.P.  
1001 Main Street, Suite 504  
Lubbock, Texas 79401

OR2015-15865

Dear Ms. Weaver:

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# 572102.

The North and East Lubbock Community Development Corporation (the "corporation"), which you represent, received two requests from the same requestor for copies of all bank statements and checks related to specified bank accounts from March 1, 2014, until December 21, 2014, and IRS 990 forms from specified time periods. You state the corporation has released some information to the requestor. You state you will withhold information subject to section 552.136 of the Government Code.<sup>1</sup> You claim some of the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

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[.]

*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). The Texas Supreme Court has defined “‘supported in whole or part by public funds’ to include only those private entities or their sub-parts sustained, at least in part, by public funds, meaning they could not perform the same or similar services without the public funds.” *Greater Houston P’ship v. Paxton*, No. 13-0745, 2015 WL 3978138, at \*9 (Tex. June 26, 2015). Thus, section 552.003(1)(A)(xii) encompasses only those private entities that are dependent on public funds to operate as a going concern, *see id.* at \*7, and only those entities acting as the functional equivalent of the government, *see id.* at \*8.<sup>2</sup>

We understand the corporation is a private, not-for-profit corporation organized under section 501(c)(3) of the Internal Revenue Code.<sup>3</sup> We also understand the corporation has entered into an agreement with the City of Lubbock (the “city”) to provide services to the city, including undertaking housing development and community economic development.<sup>4</sup> *See* 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). You state the corporation was supported by funds from the city from March 1, 2014, until September 30, 2014, and you acknowledge the corporation is a governmental body with respect to the submitted information generated during this period. Accordingly, we understand the corporation was sustained by public funds from March 1, 2014, until September 30, 2014, and was acting as the functional equivalent of the city during such time period. Therefore, upon consideration and review, we conclude the corporation was a governmental body with respect to the submitted information generated from March 1, 2014, to September 30, 2014, and therefore, this information is public information subject to disclosure under the Act.

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<sup>2</sup>In this regard, we note your reliance on previous ruling from this office to the corporation, namely, Open Records Letter Nos. 2014-06465 (2014), 2014-04182 (2014), and 2014-04140 (2014), in which this office concluded only those records relating to those parts of the corporation’s operations that are directly supported by public funds are subject to the disclosure requirements of the Act. However, as set forth above, the law upon which the previous rulings was based has changed.

<sup>3</sup>*See* Open Records Letter No. 2014-04140 (2014).

<sup>4</sup>*Id.*

However, you state the corporation did not receive public funds from October 1, 2014, through December 21, 2014. We note the requestor alleges the corporation was in fact supported by public funds from October 1, 2014, through December 21, 2014, on the basis that public funds were obtained by the corporation after this period for use in satisfying debts incurred during this period. However, we note the submitted documentation reflects the corporation was able to continue as an ongoing concern during this period. Accordingly, the corporation was not sustained by public funds from October 1, 2014, through December 21, 2014. Therefore, we conclude the corporation was not a governmental body with respect to the submitted information generated from October 1, 2014, through December 21, 2014, and thus, this information is not subject to the Act and need not be released in response to this request.<sup>5</sup> We will next address your argument against disclosure of the information generated from March 1, 2014, until September 30, 2014.

We note the information subject to the Act consists entirely of information that is also subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher or contract relating to the receipt or expenditure of public or other funds by a governmental body; [.]

Gov't Code § 552.022(a)(3). The information at issue consists of information in an account, as well as cancelled checks that pertain to the receipt and expenditure of funds by the corporation. This information is subject to section 552.022(a)(3). The corporation asserts the information at issue is excepted from release under section 552.108 of the Government Code. However, this section is discretionary and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the corporation may not withhold the information at issue under section 552.108.

In summary, the information generated from October 1, 2014, until December 21, 2014, is not subject to the Act and need not be released in response to this request. The information

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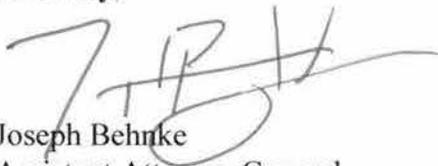
<sup>5</sup>As we are able to reach this determination for this information, we need not address your argument against its disclosure.

subject to the Act must be released pursuant to section 552.022(a)(3) of the Government Code.

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 'J. Behnke', is written over a circular stamp or seal.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 572102

Enc. Submitted documents

c: Requestor  
(w/o enclosures)