



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2016

Mr. Kevin W. Cole
Counsel for the Austin Revitalization Authority
The Cole Law Firm
4101 Wildwood Road
Austin, Texas 78722

OR2016-03360

Dear Mr. Cole:

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# 597878.

Austin Revitalization Authority ("ARA"), which you represent, received a request for all board agendas, board meeting minutes, audio recordings of board meetings, and any budgets prepared during a specified time period. ARA claims it is not a governmental body subject to the Act. In the alternative, ARA claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered ARA's arguments and reviewed the submitted representative sample of information.¹

ARA asserts it is not a governmental body subject to the Act. 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[.]

Gov't Code § 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

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

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*, 468 S.W.3d 51, 63 (Tex. 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 61, and only those entities acting as the functional equivalent of the government, *see id.* at 62.

ARA informs us it is a nonprofit corporation and holds an arms-length lease agreement with the City of Austin. ARA states it is not supported by public funds in a manner that would cause it to be a governmental body for purposes of the Act. Based on ARA’s representations, we find ARA is not sustained by public funds. *See id.* at 63. Therefore, ARA does not fall within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code and is not subject to the Act. Accordingly, ARA need not respond to the 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/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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 597878

Enc. Submitted documents

c: Requestor

²As we are able to make this determination, we do not address ARA remaining arguments.