



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 13, 2016

Ms. Caroline E. Cho
Counsel for the National Cooperative Purchasing Alliance
Rapfogel Law Firm, PLLC
4200 Montrose Boulevard, Suite 430
Houston, Texas 77006

OR2016-13365

Dear Ms. Cho:

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# 613810.

The National Cooperative Purchasing Alliance (the "NCPA"), which you represent, received a request for five categories of information pertaining to its relationship and communications with Region XIV Education Service Center ("Region 14"). You assert the NCPA is not a governmental body subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert the NCPA 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 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.

The NCPA informs us it is a private for profit company. You explain the NCPA has an independent contractor arrangement with Region 14 by which Region 14 solicits and awards certain contracts and the NCPA then manages and markets such contracts to eligible nonprofit and public agencies. You state the NCPA generates profits from administrative fees collected from participating private vendors and it is not supported in whole or part by public funds as it does not directly receive any payment from any public entity. Upon review of your representations, we find the NCPA is not sustained by public funds. *See id.* at 63. Therefore, we conclude the NCPA is not supported in whole or part by public funds and does not fall within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code. Thus, the NCPA is not subject to the Act. Accordingly, the NCPA need not respond to the request for information.¹

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 Lay
Assistant Attorney General
Open Records Division

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Ref: ID# 613810

c: Requestor

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.