



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 11, 1990

Mr. Joe L. McCormick  
Executive Director  
Texas Guaranteed Student  
Loan Corporation  
P.O. Box 15996  
Austin, Texas 78761-5996

Open Records Decision No. 563

Re: Whether the Texas Guarantees  
Student Loan Corporation  
is a "governmental body" under  
the Open Records Act, article  
6252-17a, V.T.C.S., and re-  
lated questions (RQ-2028)

Dear Mr. McCormick:

You have received a request for records pursuant to the Texas Open Records Act, article 6252-17a, V.T.C.S. You ask whether the Texas Guaranteed Student Loan Corporation (hereinafter, the "corporation") is a "governmental body" within the meaning of the Open Records Act, and, if so, whether the requested information is subject to required public disclosure.

The corporation is a public nonprofit corporation created by chapter 57 of the Education Code. It guarantees loans to eligible students under the federal guaranteed student loan program established by the Higher Education Act of 1965, as amended 20 U.S.C. § 1001 et seq. The corporation is governed by a board of ten directors, nine of whom are appointed by the governor with the advice and consent of the senate. The tenth board member is the comptroller of public accounts or the comptroller's designee. Educ. Code § 57.13.

The term "governmental body" is defined in section 2(1) of the Open Records Act. You assert, and we agree, that the corporation must fall within either section 2(1)(A) or section 2(1)(F) to be considered a governmental body subject to the Open Records Act. The relevant provisions read as follows:

Sec. 2. In this Act:

(1) "Governmental body" means:

(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is under the direction of one or more elected or appointed members;

. . . . .

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof.

You suggest that section 2(1)(A) does not include a nonprofit corporation because the language only refers to a "board, commission, department, committee, institution, agency or office." You further assert that the recent amendment to section 57.11 of the Education Code specifically making the corporation subject to the Open Meetings Act, V.T.C.S. art. 6252-17, evidences that the legislature recognized the fact that the corporation is not a "governmental body" within the meaning of The Open Meetings Act, and that this further evidences that the corporation is not a governmental body within the meaning of section 2(1)(A) of the Open Records Act.

Whether the corporation is a "governmental body" as defined in the Open Records Act was previously considered by this office in Attorney General Opinion MW-295 (1981), which stated:

We believe, however, that the corporation is subject to the provisions of the Open Records Act, article 6252-17a, V.T.C.S. Section 2(1)(F) of that statute specifically extends coverage to 'every . . . corporation . . . which is supported in whole or in part by public funds.' Since the corporation received a start up appropriation, we believe it falls within the precise language of the Open Records Act.

You assert that the conclusion of MW-295 regarding the applicability of the Open Records Act to the corporation was based upon an erroneous factual assumption that the source of the corporation's initial appropriation was public funds.<sup>1</sup> You argue that, because the source of the corporation's initial appropriation was a federal grant to the Coordinating Board, Texas College and University System, these funds were not "public funds" as the term is defined in section 2(1)(F) of the Open Records Act.

The analysis you suggest with respect to section 2(1)(A) of the Open Records Act requires a rather cramped reading of the statutory language. By enumerating various names by which governmental entities may be called, the drafters of the Open Records Act make clear the comprehensive nature of the act's coverage: that nomenclature is not determinative of whether an entity is a "governmental body."

Among the entities enumerated in section 2(1)(A) we find any "institution." Webster defines "institution" as

an established society or corporation: an establishment or foundation esp. of a public character.

Webster's Third New International Dictionary 627 (1969) (emphasis added). Black's Law Dictionary offers the following definition of "institution":

An establishment, especially one of eleemosynary or public character or one affecting a community. An established or organized society or corporation.

Black's Law Dictionary 719 (5th ed. 1979) (emphasis added).

Thus, the corporation is an "institution . . . created by . . . the . . . legislative branch of the state government, and which is under the direction of one or more elected or appointed members." As such it falls squarely within the definition of "governmental body" found in section 2(1)(A) of the Open Records Act.

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1. MW-295 does not discuss whether the corporation is within the definition of governmental body found in section 2(1)(A) of the Open Records Act.

The Open Records Act and the Open Meetings Act are separate statutes, the terms of which must be considered separately. Open Records Decision Nos. 557 (1990); 491 (1988). Attorney General Opinion MW-295 found that the legislature did not intend the corporation to be subject to article 6252-17.

The 1989 amendment of section 57.11 of the Education Code to bring the corporation under the coverage of the Open Meetings Act was intended to "enhance the accountability of the corporation to the state." Bill Analysis, H.B. 715, 71st Leg. (1989). We note that remedial legislation in this regard was not necessary with respect to the Open Records Act as the corporation had been found by this office to be subject to the coverage of the Open Records Act and had been complying with its provisions.

Section 2 of the act adding chapter 57 to the Education Code, provides as follows:

The sum of \$1.5 million is transferred from the federal lender's allowance funds of the Coordinating Board, Texas College and University System, to the corporation. The corporation shall use the funds to meet initial operating expenses, to establish the initial reserve necessary for loan guarantees, and to match federal funds available under the Higher Education Act of 1965, as amended.

Acts 1979, 66th Leg., ch. 706, § 2, at 1717.

The Coordinating Board, Texas College and University System, is an agency of the State of Texas created and operating pursuant to chapter 61 of the Education Code. Section 61.068 of the Education Code provides:

The Board may accept gifts, grants, or donations of personal property from any individual, group, association, or corporation, or the United States, subject to such limitations or conditions as may be provided by law. Gifts grants or donations of money shall be deposited in the state treasury and expended in accordance with the specific purpose for which given, under such conditions as may be imposed by the donor and as provided by law.

The corporation was initially funded by an appropriation by the legislature from funds deposited in the state treasury. That the source of these funds was a federal grant is not determinative of whether the funds are within the definition of "public funds" found in section 2(1)(F) of the Open Records Act. Federal funds deposited in the state treasury become state funds. Attorney General Opinions JM-118 (1983); C-530 (1965). Thus, as found in Attorney General Opinion MW-295, the corporation falls precisely within the language of section 2(1)(F) of the Open Records Act.

We now turn to a consideration of the requested records and the exceptions from public disclosure you claim with respect to each.

The requestor seeks "statements, position papers, internal memoranda, correspondence, and other documents setting forth the [corporation's] relationship and dealings with the Austin Better Business Bureau." You have advised the requestor that you have no "statements" or "position papers" responsive to his request. You claim that memoranda and correspondence responsive to the request are excepted from required public disclosure by section 3(a)(11) of the Texas Open Records Act.

Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. See, e.g., Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App. - San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Factual information, where severable, is not excepted from public disclosure by section 3(a)(11). Open Records Decision No. 559 (1990). Section 3(a)(11) may apply to memoranda from a "consultant" outside the agency if the consultant has some duty to advise the agency or act on its behalf in an official capacity. Open Records Decision No. 429 (1985).

You advise that the corporation and the Austin Better Business Bureau (hereinafter, the "ABBB") are currently engaged in a joint project to reduce marketing abuses by proprietary schools. In this regard, we believe that the

ABBB may be regarded as a consultant with a duty to advise the corporation.

However, our review of the documents submitted for our inspection reveals that, with two exceptions, the internal memoranda of the corporation with regard to the ABBB, the correspondence from the ABBB to the corporation and the correspondence from the corporation to the ABBB contain no advice, opinion, or recommendation to be used in the deliberative process. Rather, these documents convey or summarize factual information, discuss business arrangements, or describe the joint undertaking between the corporation and the ABBB. The two exceptions are a memorandum dated July 6, 1989, from Joe McCormick to George Torres, which may be withheld in its entirety, and the third paragraph of a letter dated October 4, 1989, from John Etchieson to Joe McCormick. Only the third paragraph of the October 4 letter may be withheld. No other material is excepted from public disclosure by section 3(a)(11).

The requestor has asked for "minutes of the Board of Directors' meetings, executive sessions and Board Committee Meetings wherein [the corporation's] relationship and dealings with the [ABBB] are discussed."

You advise that you have already released minutes of board meetings in which the corporation's relationship with the ABBB was discussed. Minutes of a properly held executive session are confidential under section 2A(c) of the Open Meetings Act. See Open Records Decision No. 495 (1988). Among the documents submitted for our inspection, the only minutes are those of a meeting of the "executive committee" of the corporation held on November 2, 1989. You assert that meetings of the "executive committee" are not required to be open to the public under the Open Meetings Act,<sup>2</sup> and on this premise argue that its minutes are "deemed confidential by law" under section 3(a)(1) of the Open Records Act. This argument was considered and rejected in Open Records Decision No. 491 (1988). In that opinion we stated:

The Open Records Act applies to governmental bodies not covered by the Open Meetings Act.

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2. For our purposes here, we need not, and do not consider the accuracy of this premise. See Attorney General Opinions H-823 (1976); H-3 (1973).

Whether or not a meeting of an entity must be open, a record of that meeting which the entity assembles or maintains is subject to required disclosure if the entity is a 'governmental body' within the Open Records Act and the record is not within one of the act's specific exceptions.

. . . .

The Open Meetings Act, moreover, cannot make the record 'confidential' by negative implication under section 3(a)(1) of the Open Records Act. The Open Meetings Act does not express an 'intent' that meetings not expressly made public within its terms shall be closed to the public. The act expresses no intent with respect to such meetings and cannot provide implied statutory confidentiality under section 3(a)(1) of the Open Records Act.

As you assert no other exceptions to public disclosure with respect to the "executive committee" minutes, we conclude they must be released.

The requestor seeks "[d]ocuments showing the source of funds for any donation or grants made to the [ABBB] or any other trade or business association during 1989-1990" and "[a]ll contracts, letters of understanding and other written agreements evidencing [the corporation's] current working agreement with the Federal Department of Education and the Texas Education Agency." You advise with respect to the request for documents showing the source of certain funds that "[t]he funds came from the operating account of the [corporation]. This account has a commingling of funds which does not allow the determination of the source of the funds for an individual expenditure." With respect to the request for documents evidencing the corporation's relationship with the Department of Education and the Texas Education Agency, you advise that "[s]ince virtually every business activity of the [corporation] is governed by or related to the provisions of the Education Act and the Department of Education, the effect of [the] request would be to compel the [corporation] to release essentially every document which it maintains." We agree that these requests as worded are overbroad. In such an instance, you may advise the requestor of types of information available so that he may appropriately narrow his request. Open Records Decision No. 31 (1974).

The remaining requests ask for "[d]ocuments showing the authority" of the corporation to perform or engage in various activities. While couched as requests for documents, these are essentially requests for federal and state laws and regulations governing the activities of the corporation and for a statement of the corporation's interpretation of these provisions. The Open Records Act does not require a governmental body to perform legal research for a requestor nor to answer general questions. See Open Records Decision No. 342 (1982).

S U M M A R Y

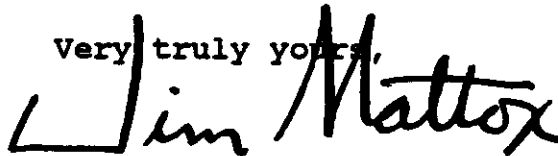
The Texas Guaranteed Student Loan Corporation is a "governmental body" within the meaning of the Open Records Act.

Minutes of meetings not required to be held publicly under the Open Meetings Act may still be subject to required public disclosure under the Open Records Act.

When a request under the Open Records Act is overbroad, a governmental body may advise the requestor of the types of information available so that the request may be appropriately narrowed.

The Open Records Act does not require a governmental body to perform legal research for a requestor or to answer general questions.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly stylized font. The first name "Jim" is written in a smaller, more compact script, while "Mattox" is written in a larger, more flowing script. The signature is positioned to the right of the typed name "JIM MATTOX".

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