



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 14, 1993

Mr. C. Lynn Daughrity  
Law Offices of Carl A. Parker  
1 Plaza Square  
Port Arthur, Texas 77642-5513

OR93-297

Dear Mr. Daughrity:

The Port Arthur Housing Finance Corporation ("PAHFC"), which you represent, has received an application for information pursuant to the Open Records Act, V.T.C.S. article 6252-17a. The applicant has requested the names and addresses of bond holders who are owners of the "1980 single-family mortgage revenue bonds," issued by the PAHFC. You have referred this matter to us and we have assigned it ID# 17704.

You inform us that PAHFC, a non-profit corporation established pursuant to chapter 394 of the Local Government Code, has redeemed a 1980 Series bond issue and in its place issued a 1992 Series secured by the same mortgages. A securities firm has requested the names and addresses of all persons who purchased the 1980 Series bonds.

You first suggest that PAHFC is not a governmental body subject to the Open Records Act. You argue that it is not controlled by Open Records Decision No. 601 (1992), which held that the El Paso Housing Finance Corporation, also created pursuant to chapter 394 of the Local Government Code, was a governmental body subject to the Open Records Act.

Open Records Decision No. 601 concluded that the El Paso Housing Finance Corporation was subject to the Open Records Act because it fit within the following definition of governmental body:

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.

V.T.C.S. art. 6252-17a, § 2(1)(G).

Open Records Decision No. 601 focused on the character of the funds supporting the corporation or expended by it, stating as follows:

Chapter 394 contains several provisions dealing with the status and disposition of funds and property held by corporations created under it. Most significantly, "The housing finance corporation, all property owned by it, the income from the property, all bonds issued by it, the income from the bonds, and the transfer of the bonds" are exempt from state and local taxes as "public property used for public purposes." Local Gov't Code § 394.905. The net earnings of the corporation, if any, "shall be paid to the local government," *Id.* § 394.023(b). Furthermore, upon dissolution of the corporation, which may be accomplished by the governing body at its sole discretion, "title to all funds and property owned by the corporation as the time of dissolution vests in the local government" and "shall be promptly delivered" to it. *Id.* § 394.026(b) (emphasis added).

Given these provisions, we determine that *funds held by the corporation* (such as those raised by the collection of fees from applicants) *are public funds, belonging to the corporation's sponsoring local government.* As we have been informed that the corporation employs these funds to meet its costs, we find that the corporation is supported by public funds.

Open Records Decision No. 601 at 2 (footnote omitted) (emphasis added).

Open Records Decision No. 601 concluded as a matter of law that funds held by the corporation are public funds, and it cited fees collected from applicants as an example of public funds collected and expended by the corporation.

You write that PAHFC has never collected any fees, owned any assets, or held any funds, but has only been a vehicle. By telephone you amplified this statement by saying that the bond documents established trustees to handle the proceeds, while the board acts as overseer. You stated that if money were left at the end of the program, it would go to the Housing Finance Corporation or the city. Your letter attempts to distinguish Open Records Decision No. 601 as follows:

If the determining factor in the El Paso decision was "that funds held by the corporation (such as those raised by the collection of fees by applicants) or public funds belonging to the corporations [s] sponsoring local government," then it would follow that PAHFC is not a governmental body due to its lack of collecting fees, making profit or holding funds.

The requestor has sent us information to the effect that the board of the PAHFC has considered turning over some or all of the refunding proceeds to the City of Port

Arthur. Port Arthur News, Aug. 11, 1992 at 1A; Public Notice of Meeting, September 24, 1992, Port Arthur Housing Finance Corporation (proposed resolution on transfer of half of proceeds of refunding bonds to City of Port Arthur).

We cannot resolve disputes of fact in an open records ruling. See Open Records Decision No. 426 (1985). Your letter makes it clear, however, that PAHFC has issued bonds secured by mortgages, and the bond proceeds, revenues generated by housing, and mortgages would constitute funds and assets of the PAHFC. Chapter 394 moreover indicates that a housing financing authority operating under its provisions will own assets, such as bond proceeds and mortgages. See Local Government Code §§ 394.037, 394.040, 397.041. Even if the PAHFC has arranged for another entity to handle ministerial aspects of its transactions and therefore does not have physical possession of fees, assets, or funds, it remains the legal owner of its assets. See *id.* §§ 394.031 (housing finance corporation may exercise powers incidental to or necessary to perform statutory and corporate powers), 394.032 (housing finance corporation may make contracts as necessary or convenient to exercise powers). Accordingly, PAHFC holds and expends public funds. It is a governmental body within section 2(1)(G) of the Open Records Act.<sup>1</sup>

You next argue that the names and addresses of bond holders are excepted from disclosure by a right of privacy incorporated into section 3(a)(1) of the act. Open Records Decision No. 590 (1991) summarized prior decisions of this office on the disclosure of personal financial information:

Prior decisions concerning disclosure of financial matters have made a distinction between "background financial information furnished to a public body about an individual" and "the basic facts regarding a particular financial transaction between the individual and the public body." Open Records Decision Nos. 545 (1990); 523 (1989); 385 (1983). This office has found information in the first category to be protected by privacy law, but has found information in the latter to be available to the public.

Open Records Decision No. 590 at 3. The names and addresses of persons holding bonds in PAHFC constitute basic facts about a particular financial transaction between

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<sup>1</sup>Section 7(a) of the Open Records Act establishes a deadline of ten calendar days for a governmental body to request a ruling from the attorney general on the availability of information requested from it. If the governmental body does not request a ruling within that time, the information will be presumed to be open to the public, although a compelling interest will overcome the presumption. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). We have copies of two letters that the requestor addressed to PAHFC, dated August 12, 1992 and September 23, 1992. The PAHFC informs us that neither letter was received by the PAHFC until September 28, 1992. Based on the outcome of this ruling, we need not decide whether the PAHFC waived the ten-day deadline.

individuals and a public body. Accordingly, this information is not excepted from disclosure by a right of privacy.

You also claim that the names and addresses are within section 3(a)(4) of the Open Records Act, which permits you to withhold "information which, if released, would give advantage to competitors or bidders." Section 3(a)(4) protects interests of a governmental body that relate to competition for a contract or benefit, for example, in a competitive bidding situation. Open Records Decision No. 592 (1991) at 8. You argue that release of the names and addresses of bond holders will give an undue advantage to the requestor over its competitors in the market. This interest is not an interest of the PAHFC; thus, it is not an interest protected by section 3(a)(4).

You also suggest that the release of the information would place PAHFC at a disadvantage not imposed upon other businesses. Open Records Decision No. 593 (1991), in concluding that the Teacher Retirement System was a "competitor" within section 3(a)(4), stated that a governmental body authorized by law to engage in competition, "must be afforded the right to claim the 'competitive advantage' aspect of section 3(a)(4)." Open Records Decision No. 593 at 4. The governmental body could withhold information under section 3(a)(4) by demonstrating that releasing it would cause harm to its legitimate marketplace interests. Open Records Decision No. 593 at 5. You have not shown that PAHFC is authorized to engage in competition or that, assuming it was a competitor, that release of the bond holders' names and addresses would harm its legitimate marketplace interests. Accordingly, section 3(a)(4) does not authorize you to withhold the bond holders' names. You must release this information to the requestor.

If you have any questions with regard to this letter, please contact our office.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SLG/MRC/le

Ref.: ID# 17704

cc: Mr. Thomas E. Newman  
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