



May 24, 2000

Ms. Eileen Hegar
Executive Director
Williamson County Humane Society
3737 CR 272
Leander, Texas 78641

OR2000-2056

Dear Ms. Hegar:

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 requests were assigned ID#s 135723 and 135792. We have combined these files and will consider the issues presented in this single ruling assigned ID# 135723.

The Williamson County Humane Society, Inc. (the "humane society") received a series of requests from two different individuals for a variety of information pertaining to the humane society's operation of an animal shelter, its provision of animal control services, its finances, officers and employees, and related matters.¹ You seek a determination of whether the humane society is subject to the Act. We have considered your arguments, the background materials that you submitted, and the correspondence that was submitted to this office by the individuals who made the requests for information.

You assert that the humane society is not subject to the Act. You represent to this office that the humane society is a private, charitable, non-profit section 501(c)(3) organization, the majority of whose funding is derived from private donations and grants.² You state that the humane society is not a federal, state, county, or city governmental agency and that it does

¹The file that we assigned ID# 135723 involves a request dated March 23, 2000. The file that we assigned ID# 135792 relates to four requests, dated February 8, 9, 16, and 24.

²Section 501 of the federal Internal Revenue Code exempts from federal taxation "[c]orporations ... organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes ... or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual[.]" 26 U.S.C. § 501(c)(3).

not receive any grants of public funds. You also inform us, however, that the humane society contracts with both Williamson County (the "county") and the City of Round Rock (the "city") to provide certain animal control services. You have submitted copies of "Administrative Agreement[s]" between the humane society and the county and the city. With regard to those agreements, you state:

Though we do not receive or handle public funds, the [humane society] does contract with both [the county] and the [city] to provide certain services to each entity's animal control department ... Neither entity has an adequate public pound for its citizens and therefore contracts with [the humane society] to provide those services. In addition to sheltering services, the [humane society] provides office space for the animal control officers, licensing services, rabies observation, and rabies testing. As compensation to the [humane society] for providing those services under the contracts, we are authorized to collect and retain licensing fees, boarding fees and reclamation fees from the public for reclaimed animals. We also are paid directly by the governmental entities for any fees associated with the handling of stray, unclaimed animals. Since these fees do not cover the entire cost of providing these sheltering services, the governmental entities pay an additional fixed monthly fee to the [humane society].

An entity that is supported in whole or in part by public funds or that spends public funds is deemed to be a governmental body for the purposes of the Act. *See* Gov't Code § 552.003(1)(A)(x). Public funds are "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(5). However, the Act does not apply to private persons or businesses simply because they provide goods or services under a contract with a governmental body. *See* Open Records Decision No. 1 (1973). An entity that receives public funds in exchange for services, as would be expected in a typical arms-length contract between a vendor and a purchaser, is not a governmental body under the Act. *See* Attorney General Opinion JM-821 (1987); Open Records Decision No. 228 at 2 (1979). If, however, a governmental body makes an unrestricted grant of funds to a private entity to use for its general support, the private entity is a governmental body subject to the Act. *Id.* If a distinct part of an entity is supported by public funds within section 552.003(1)(A)(x) of the Government Code, the records relating to that part or section of the entity are subject to the Act, but records relating to parts of the entity that are not supported by public funds are not subject to the Act. *See* Open Records Decision No. 602 at 5-6 (1992).

The courts also have considered the scope of the Act's definition of "governmental body." In *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses to be "governmental bodies" that are subject to the Act simply because they provide specific goods or services under a contract with a governmental body. *See* 850 F.2d at 228, *citing* Open Records Decision No. 1 (1973). Rather, the *Kneeland* court observed that in

interpreting the predecessor to section 552.003 of the Government Code, the attorney general's opinions generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes "a specific and definite obligation ... to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." Tex. Att'y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that "a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the ... definition of a 'governmental body.'" Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide "services traditionally provided by governmental bodies."

Id.

As the *Kneeland* court noted, in considering the breadth of the Act's definition of "governmental body" the attorney general has distinguished between private entities receiving public funds in return for specific, measurable services and entities receiving public funds as general support. Thus, in Open Records Decision No. 228 (1979), we considered whether the North Texas Commission (the "commission"), a private, non-profit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, was a "governmental body" under the Act. *Id.* at 1. The contract between the commission and the City of Fort Worth obligated the city to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission, among other things, to "[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City's interests and activities." *Id.* at 2. Noting this provision, we stated that "[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of 'supporting' the operation of the [c]ommission with public funds[.]" *Id.* Accordingly, this office found the commission to be a governmental body for purposes of the Act. *Id.* In subsequent decisions, this office has found certain other private entities to be governmental bodies under section 552.003 of the Act or its statutory predecessor. *See, e.g.*, Attorney General Opinion JM-821 (1987) (volunteer fire department receiving general support from fire prevention district); Open Records Decision Nos. 621 (1993) (Arlington Chamber of Commerce and Arlington Economic Development Foundation, through which chamber of commerce received support of public funds), 602 (1992) (portion of the Dallas Museum of Art supported by public funds), 273 (1981) (search advisory committee established by board of regents to recommend candidates for university presidency that

expended public funds). In contrast, certain private entities were determined not to be governmental bodies under the statutory predecessor to section 552.003. *See, e.g.*, Open Records Decision Nos. 602 (1992) (portion of the Dallas Museum of Art not supported by public funds, in particular, a specific privately donated art collection), 569 (1990) (Fiesta San Antonio Commission, which leased facilities from city and received permits and licenses to use public streets for parades and other events).

In Attorney General Opinion JM-821 (1987), this office stated that “[t]he primary issue in determining whether certain private entities are ‘governmental bodies’ under the [A]ct is whether they are supported in whole or in part by public funds or whether they expend public funds.” *Id.* at 2. In order to resolve that pivotal issue in this particular instance, we have carefully considered your arguments and have examined the contracts between the humane society and the county and the city that you submitted.³ We believe that pertinent provisions of those agreements make it abundantly clear that the humane society’s operation of the animal shelter and provision of animal control services for the county and the city is supported in large part by public funds. The latter include not only the fees relating to stray animals that are paid to the humane society by both governmental bodies, but also the substantial monthly “flat fees” that each entity pays to the humane society under its respective contract.⁴ Additionally, both of the contracts entitle the humane society to collect and use the proceeds of licensing and reclamation fees “in [its] sole discretion ... for the continued operation of the animal shelter” and to collect and apply the proceeds of boarding and rabies testing fees for that same purpose. Thus, it is clear to this office that the humane society’s provision of local animal shelter and control services is supported substantially, if not entirely, by funds that have been allocated to the society by the county and the city. Finally, we also find it to be significant here that in operating the animal shelter and providing animal control services under its contracts with the county and the city, the humane society is providing, for compensation, services that traditionally are provided by governmental bodies. *See Kneeland*, 850 F.2d at 228; *see generally* Health & Safety Code ch. 821 *et seq.* We therefore conclude that, to the extent of its operation of the local animal shelter and provision of animal control services under its contractual relationships with the county and the city, the humane society is a governmental body under section 552.003(1)(A)(x) of the Government Code. *See also* Open Records Decision No. 302 (1982) (determining Brazos County Industrial Foundation, a non-profit corporation that provided assistance to manufacturing and industrial enterprises in county and received unrestricted grant of funds from City of Bryan, to be governmental body subject to the statutory predecessor to the Act).

Having determined that the humane society acts as a governmental body in operating the animal shelter and providing animal control services, we also must consider whether the

³The material provisions of both agreements appear to be substantially identical.

⁴The contracts that you submitted provide for the humane society to receive \$2,083.33 per month from the county and \$1,666.67 per month from the city during the respective terms of the agreements.

information that the humane society has been requested to release is subject to public disclosure under the Act. Section 552.002 of the Act provides in relevant part that “‘public information’ means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business ... by a governmental body[.]” Gov’t Code § 552.002(a)(1). Thus, the question is whether the requested information pertains to the official business – the operation of the animal shelter and the provision of animal control services – that the humane society acts as a governmental body in transacting. *See* Open Records Decision No. 621 at 8 (1993) (holding information relating to economic development activities that Arlington Chamber of Commerce performed on behalf of Arlington Economic Development Foundation to be subject to the Act); *compare* Open Records Decision No. 602 at 5-6 (1992) (concluding that Dallas Museum of Art was not required to release information relating to an aspect of its operations that was not supported by public funds).

The humane society’s request for a decision that we assigned ID# 135723 involves a request for information relating to: (1) the humane society’s acquisition and administration of euthanasia solution; (2) its acquisition and possession of other controlled substances and prescription drugs; (3) its controlled substance license; (4) training of its members and employees under section 823.004 of the Health and Safety Code; (5) its receipt of fees for rabies vaccinations, spaying, and neutering; (6) its employment of veterinarians during the past twelve months; (7) its office in Leander; and (8) its maintenance of records of animals that are spayed, neutered, treated with prescription drugs, and/or vaccinated for rabies.

Your request for a decision that we assigned ID# 135792 involves four requests for a variety of information.⁵ The requestor seeks: (1) the salary of the executive director for 1999; (2) the amount of money received by the humane society from animal license tags for 1999; (3) information relating to the euthanization of animals; (4) the number of animal adoptions performed in the past year; (5) the humane society’s federal tax forms 990 for the current and past three years; (6) the management letter from the humane society’s independent auditor to its board of directors for the audited year December 31, 1998; (7) the compensation package for the members of the board of directors, including but not limited to salaries, reimbursements, and travel expenses; (8) the annual salaries of two individuals identified as the director and the office manager and of another individual; and (9) copies of a contract with a landfill used for the disposal of euthanized animals.

We are satisfied that all of the requested information pertains to the humane society’s operation of the animal shelter and provision of animal control services, under its contracts with the county and the city, or to its receipt and disposition of funds that are collected by or paid to the humane society pursuant to those contracts. We therefore conclude that all of the requested information is subject to disclosure in accordance with the Act. *See* Gov’t Code §§ 552.001(b) (requiring liberal construction of Gov’t Code ch. 552 in favor of granting a request for information), 552.006 (providing that the Act does not authorize the

⁵Some of the requested information is made the subject of more than one request.

withholding of public information or limit its availability to the public, except as expressly provided by Gov't Code ch. 552). In requesting this decision, the humane society relied solely on the contention that it is not a governmental body that is subject to the Act. You did not raise any exception to disclosure of the requested information or identify and submit for our review any information that the humane society seeks to withhold. Consequently, all of the requested information is presumed to be public and must be released unless there is a compelling reason to withhold it from disclosure. See Gov't Code §§ 552.301(b), (e) (providing deadlines for governmental body that seeks to withhold information from public to request decision by attorney general, state exceptions to disclosure that apply, provide written comments stating why exceptions apply, and submit and identify requested information that it seeks to withhold), 552.302 (providing that requested information that governmental body does not seek to withhold in compliance with section 552.301 is presumed to be subject to disclosure and must be released unless there is a compelling reason to withhold it from public); see also *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. -- Austin, no writ). Ordinarily there is a compelling reason to withhold information from the public if some other source of law makes it confidential or if certain third-party interests are at stake. See Open Records Decision No. 630 at 3 (1994). In the absence of compliance with section 552.301(e), however, we are unable to determine whether there is any compelling reason to withhold from disclosure any of the information that is requested here.⁶ Therefore, the humane society must release the requested information. See Gov't Code §§ 552.021 (making public information available during governmental body's normal business hours), 552.221(a) (requiring governmental body's officer for public information to promptly produce public information); see also Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure be released as soon as possible under the circumstances, *i.e.*, within a reasonable time, without delay). We caution the humane society, however, that chapter 552 of the Government Code makes the release of confidential information a criminal offense. See Gov't Code §§ 552.101 (excepting from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision"), 552.352 (providing criminal penalties for release of confidential information).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

⁶Section 552.301(e) provides in relevant part that a government body that seeks to withhold requested information from the public must "submit to the attorney general ... a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested; and ... label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy." Gov't Code § 552.301(e).

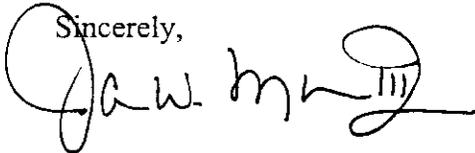
governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with the last name "Morris" being particularly prominent.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 135723

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