



March 26, 2001

Mr. David Conejo
Chief Executive Officer
Big Bend Regional Medical Center
2600 Highway 118 North
Alpine, Texas 79830

OR2001-1172

Dear Mr. Conejo:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144887.

You state that the Big Bend Hospital Corporation (the "BBHC") received a written request pursuant to the Public Information Act for the minutes of each meeting of the Board of Trustees of the corporation held subsequent to September 30, 1999.¹ You explain that prior to October 1, 1999,

a different local hospital facility was owned and operated as a public entity by the Big Bend Regional Hospital District (the "District"), and managed by BBHC. On October 1, 1999, BBHC, a private, for profit entity, entered into a Development Agreement with the District whereby BBHC would build, own, and operate an acute care hospital in Alpine, Texas. Simultaneously, the District would shut down the existing facility and transfer operations to the new facility owned and operated by BBHC. From October 1, 1999 to the present BBHC has been, and continues to be, operated as a private, for profit hospital.

¹You did not submit to this office a copy of the written request for information. See Gov't Code § 552.301(e)(1)(B).

You contend that the BBHC is not a “governmental body” for purposes of the Public Information Act and accordingly is not required to comply with the current request.

An entity that is supported in whole or in part by public funds or that spends public funds is a “governmental body” under the Public Information Act. *See* Government Code § 552.003(1)(A)(x) (“‘Governmental body’ . . . means . . . 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.”). Public funds are “funds of the state or of a governmental subdivision of the state.” *Id.* § 552.003(5).

In *Kneeland v. National Collegiate Athletic Association*, 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 governmental bodies subject to the Act “simply because [the persons or businesses] provide specific goods or services under a contract with a government body.” *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted that 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.”

We have reviewed the “Development Agreement” between the BBHC and the district to examine the terms under which the BBHC receives support from the district. The agreement provides in pertinent part:

4.6 Indigent Care. Commencing on the Transfer Date and continuing through the term of the Site Lease, BBHC shall provide indigent care, uncompensated care and shall operate a rural health clinic in Presidio County at the same levels previously provided by the District pursuant to the

Enabling Legislation. BBHC shall, at least annually, report to District on the amount of indigent care, uncompensated care, and the unreimbursed cost of operation of District's rural health clinics. In consideration thereof, the District shall pay to BBHC the hospital net taxes collected pursuant to its Enabling Legislation, net of election and collection expenses, collected by the District at the current rate of taxation.

We disagree with your contention that the Development Agreement is a typical arms-length contract for services. The agreement does not require BBHC's to provide a "measurable amount of service" to the district nor does it provide that BBHC be compensated by a "certain amount of money." Rather, the agreement merely provides that the BBHC will generally provide the same quality of care for indigent and uncompensated care as previously supplied by the district in exchange for whatever net taxes the district collects. We therefore conclude that the BBHC is a "governmental body" for purposes of section 552.003(1)(A)(x) of the Government Code to the extent that the BBHC is supported by tax dollars from the district.

Note, however, that if only 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 not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992). For example, in Open Records Decision No. 602 (1992), this office found that portions of the activities of the Dallas Museum of Art (the "DMA") were generally supported in whole or in part with public funds, specifically funds of the City of Dallas. In clarifying the scope of information held by the DMA that is therefore subject to the Act, this office stated:

Accordingly, records related to those parts of the DMA's operation *directly supported* by the city, such as records regarding maintenance and ownership of the building and grounds, the city's art collection, utility bills [paid by the city], salaries of those employees for whom the city pays a portion, and insurance policies on which the city has paid part of the premium, are subject to the Act. However, those areas of the DMA for which the city has not provided *direct support* are not subject to the [A]ct.

ORD No. 602 at 5 (emphasis added). Because the records at issue in that decision had only a *tangential* connection to those parts of the DMA's operations that received direct support from public funds, the decision concluded that the information at issue was not subject to the Act. *Id.* at 5-6.

The terms of the Development Agreement between the district and BBHC do not appear to contain any restrictions on the BBHC's use of the tax dollars it receives from the district. It is not clear to this office whether the BBHC segregates the monies it receives from the district for the sole use of supporting particular hospital functions, such as providing indigent

care, uncompensated care, and the operation of the rural health clinic, or if the BBHC instead commingles those funds with other monies used for the general operation of the hospital. If the BBHC commingles the funds such that the public monies directly support the general operation of the hospital, we conclude that the BBHC in its entirety is a governmental body that is subject to the Public Information Act. However, if the BBHC segregates the funds it receives from the district, the BBHC is a governmental body only with respect to those hospital functions directly supported in whole or in part by district tax dollars.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must "state the exceptions that apply" to the requested information "not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(b). Additionally, the governmental body must submit to this office, "no later than the 15th business day" after the date of receiving a written request for information, "a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold information." Gov't Code § 552.302.

Other than section 552.003(1)(A)(x), you have not cited to any statutory authority for withholding the information at issue. Furthermore, because you have not provided this office with copies of the requested documents, we are unable to determine the nature of the information at issue. Consequently, we have no basis on which to conclude that there exists a compelling reason to withhold the requested information. We therefore have no choice but to order the release of the requested information that pertains to BBHC functions supported in whole or in part by the district. If you believe that responsive information is confidential or is otherwise not subject to required public disclosure under the Public Information Act, you must challenge this ruling in court as outlined below.

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 governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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).

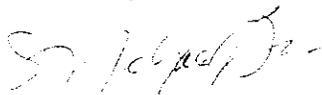
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/seg

Ref: ID# 144887

Encl. Submitted documents

cc: Mr. Donald W. Biggs
P.O. Box 1116
Fort Davis, Texas 79734
(w/o enclosures)