



October 24, 2001

Ms. Carla Gay Dickson  
1800 Guadalupe, 1<sup>st</sup> Floor  
Austin, Texas 78701

OR2001-4849

Dear Ms. Dickson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153842.

The Round Rock Chamber of Commerce (the “chamber”), which you represent, received a request for copies of information pertaining to the resignation of the former economic development director. You claim that the chamber is not a governmental body that is subject to the Public Information Act (the “Act”). Alternatively, you claim that the requested information is not subject to the Act because it does not relate to that part of the chamber that receives public funds. We have considered your claims and have reviewed the submitted information.

Section 552.003 of the Government Code defines “governmental body” in 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)(x). In *Kneeland v. National Collegiate Athletic Ass’n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the court observed that this office applies three distinct patterns of analysis in determining whether a private entity that receives public funds, in whole or in part, meets the definition of a governmental body:

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.*<sup>1</sup> You acknowledge that the chamber receives public funds from the City of Round Rock (the “city”). You state that the chamber contracts with the city pursuant to Chapter 380 of the Local Government Code to perform a variety of services, including tourism and economic development.

You also state, and provide documentation showing, that the chamber and the city have entered into an “Economic Development Funding Agreement” (the “agreement”). The agreement authorizes the city to provide public funds to the chamber and provides that the chamber will in exchange promote economic development and the attraction of business and industry in the city. You argue that the portion of the chamber that provides these services does not meet the definition of “governmental body” because the chamber only acts as an independent contractor in the services it provides the city. We find that the agreement here is substantially similar to a contract that was addressed by this office in Open Records Decision No. 621 (1993). This office concluded in that decision that the Arlington Chamber of Commerce was a governmental body to the extent it received support from another governmental body. *See id.* We note that, in this instance, the terms of the agreement do not contain any restrictions on the chamber’s use of the public funds it receives from the city. While the city may be receiving valuable services in exchange for the public funds it provides to the chamber, we find that the general provisions of the agreement fail to impose on the chamber a specific and definite obligation to provide a measurable amount of services in exchange for a certain amount of money, as one would expect to find in a typical arms-

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<sup>1</sup> This office has found certain 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); *see also* 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). In contrast, certain private entities have been 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).

length contract. In addition, the services that the chamber provides comprise a traditional governmental function. *See id.* at 8 n.10. Thus, we conclude that the chamber is a "governmental body" to the extent that it receives public funds from the city.

You claim that since the requested information has only a de minimus connection to that portion of the chamber that receives public funds, it is not subject to the Act. This office has previously ruled that when a distinct part of an entity is supported by public funds, the records relating to that part or section of the private entity are subject to the Act. For example, in Open Records Decision No. 602 (1992), this office found that some portions of the activities of the Dallas Museum of Art (the "DMA") were generally supported in whole or in part with public funds. In clarifying the scope of the information that was 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.

Open Records Decision 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. *See id.* at 5-6. However, in this instance, the submitted exhibits demonstrate that in the most recent fiscal year, public funds were commingled with other funds supporting the chamber's economic development activities and were, therefore, used to pay the former economic development director's salary. Since the information provided indicates that the chamber's economic development activities receive substantial, general support from public funds, we conclude that the requested information is subject to the Act. Since you have not raised any exceptions to disclosure, we have reviewed the submitted documents to determine whether they contain confidential information.

Section 552.117(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(1). However, information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. The submitted information contains the home address of the person who resigned. We conclude that you

must withhold this information pursuant to section 552.117(1), if the former employee requested that this information be kept confidential under section 552.024 prior to the chamber's receipt of the request for information. However, if the former employee did not request that this information be kept confidential pursuant to section 552.024 prior to the chamber's receipt of the request for information, we conclude that the chamber must release all of the submitted information to the requestor. *See* Gov't Code § 552.301(a), .302; *see also* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow).

In summary, we conclude that the requested information is subject to the Act, since the information relates to the chamber's economic development activities which are supported by public funds. Some of the submitted information may be excepted from disclosure pursuant to section 552.117(1) of the Government Code. If not, the chamber must release all of the submitted information to the requestor.

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.

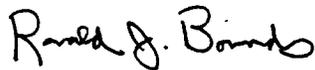
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 153842

Enc. Marked documents

cc: Mr. Tony Plohetski  
Austin American-Statesman  
Williamson County Bureau  
203 East Main  
Round Rock, Texas 78664  
(w/o enclosures)