



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2004

Mr. Charles Villeneuve  
Chairman, Board of Directors  
Business Professionals of America  
P.O. Box 13365  
Austin, Texas

OR2004-0650

Dear Mr. Villeneuve:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195001.

The Business Professionals of America-Texas Association (the "BPA") received a request for eleven categories of information. You contend, however, that the BPA may not be a governmental body for purposes of the Public Information Act (the "Act") and therefore may not be required to release any information to the requestor.

Chapter 552 is only applicable to public information. See Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, the Act applies to the records of a "governmental body." Section 552.003(1)(A) of the Government Code defines "governmental body" as an entity that spends or is supported in whole or in part by public funds. "Public funds" means funds of the state or of a governmental subdivision of the state. Gov't Code § 552.003(5). The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. See *Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.—Waco 1998, pet. denied). Further, in Attorney General Opinion JM-821 (1987), this office concluded that "the primary issue in determining whether certain private entities are governmental bodies under the [predecessor of] Act is whether they are supported in whole or in part by public funds or whether they expend public funds." Attorney General Opinion JM-821 at 2 (1987).

You represent that the BPA is a non-profit corporation primarily funded by student and professional members' dues and supplemented by "Federal Perkins Funds." We understand

you to mean the Carl Perkins Fund. You further state that BPA competitive events are funded by the registration fees of participants. In Open Records Decision No. 509 (1988), this office concluded that a private nonprofit corporation established under the Job Training Partnership Act and supported by federal funds appropriated by the state was a governmental body for the purposes of the Act. In that case, we analyzed the state's role under the federal statute and concluded the state acted as more than a simple conduit for federal funds, in part because of the layers of decision-making and oversight provided by the state in administering the programs. *Id.* at 2. The decision noted that federal funds were initially distributed to the state and then allocated among the programs at issue. Citing Attorney General Opinions JM-716 (1987) and H-777 (1976), the decision observed that federal funds granted to a state are often treated as the public funds of the state. Furthermore, in Open Records Decision No. 563 (1990), this office held that "[f]ederal funds deposited in the state treasury become state funds." *Id.* at 5 (citing Attorney General Opinions JM-118 (1983); C-530 (1965)).

In this case, the BPA applied for the federal Carl Perkins Fund through the Texas Education Agency ("TEA"), a state agency. The TEA notes that it reviews and approves the applications for the discretionary portion of the Carl Perkins Fund and appropriates the money accordingly. The TEA also states that it has oversight authority over how the funds are used once the money is distributed. The BPA was approved for this fund and receives federal funding through the TEA. We find that the TEA acts as more than a simple conduit for federal funds because the TEA maintains the financial records of the BPA and maintains a level of oversight in regards to the fund. Because the BPA receives "public funds," we find that BPA is a governmental body subject to the Public Information Act, to the extent it receives public support. *See* Open Records Decision No. 602 at 5 (1992) (we determined that the Dallas Museum of Art is a governmental body only to the extent that it receives the city's and state's support). Therefore, information relating to the activities and operations of the BPA that are directly funded by the state through the Carl Perkins Fund is, therefore, subject to the Act. However, those areas of the BPA for which the state has not provided direct support are not subject to the act. *See id.*

If any portion of the requested information relates to a part of the BPA that is supported by public funds subject to the Act, then this information must be released to the requestor because you do not contend that this information falls within any of the Act's exceptions to required public disclosure.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 195001

c: Ms. Sherry Toro  
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San Marcos, Texas 78666