



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 30, 2008

Ms. Donna Osborne
Executive Director
Concho Valley Center for Entrepreneurial Development
2009 West Beauregard
San Angelo, Texas 76901

OR2008-08809

Dear Ms. Osborne:

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 request was assigned ID# 314291.

The Concho Valley Center for Entrepreneurial Development (the "center") received two requests from the same entity for information pertaining to businesses to which the center has contributed. You argue that the center is not a governmental body subject to the Act. In the alternative, you claim that the requested information may implicate the proprietary interests of third parties. Pursuant to section 552.305(d) of the Government Code, you have notified the interested third parties of the request and of their opportunity to submit comments to this office.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability

¹ The interested third parties you notified were Gold Star Medical, Cardi-Air Ambulance Service, Gisselle's, Texas Air Solutions, Inc., Acme Millwork, Inc., Agilight, Inc., TLC in Home Care, Inc., Fletch Data, LLC, MyMail Technology, Aaggregate Media, LLC, Scrapbook University, Sabine Enterprises dba GripUS.com and Seven Year Etch, Healthcare Reimbursement Consultants, Account Control Technology, Hands of Grace, Angelo Kidney Connection, and New Life Computer and Electronic Recycling.

of exception to disclosure in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

You assert that the center is not a governmental body, and therefore its records are not subject to the Act. Under the Act, the term "governmental body" includes several enumerated kinds of entities and "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)(xii). The phrase "public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5).

Both the courts and this office previously have considered the scope of the definition of "governmental body" under the Act and its statutory predecessor. In *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), the United States Court of Appeals for the Fifth Circuit recognized that opinions of this office do not declare private persons or businesses to be "governmental bodies" that are 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; *see* Open Records Decision No. 1 (1973). Rather, the *Kneeland* court noted that in interpreting the predecessor to section 552.003 of the Government Code, this office'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."

Kneeland, 850 F.2d at 228. The *Kneeland* court ultimately concluded that the National Collegiate Athletic Association (the "NCAA") and the Southwest Conference (the "SWC"),

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

both of which received public funds, were not “governmental bodies” for purposes of the Act because both provided specific, measurable services in return for those funds. *See id.*, 850 F.2d at 230-31. Both the NCAA and the SWC were associations made up of both private and public universities. Both the NCAA and the SWC received dues and other revenues from their member institutions. *Id.* at 226-28. In return for those funds, the NCAA and the SWC provided specific services to their members, such as supporting various NCAA and SWC committees; producing publications, television messages, and statistics; and investigating complaints of violations of NCAA and SWC rules and regulations. *Id.* at 229-31. The *Kneeland* court concluded that although the NCAA and the SWC received public funds from some of their members, neither entity was a “governmental body” for purposes of the Act, because the NCAA and SWC did not receive the funds for their general support. Rather, the NCAA and the SWC provided “specific and gaugeable services” in return for the funds that they received from their member public institutions. *See id.* at 231; *see also A.H. Belo Corp. v. S. Methodist Univ.*, 734 S.W.2d 720 (Tex. App.—Dallas 1987, writ denied) (athletic departments of private-school members of SWC did not receive or spend public funds and thus were not governmental bodies for purposes of Act).

In exploring the scope of the definition of “governmental body” under the Act, this office has distinguished between private entities that receive public funds in return for specific, measurable services and those entities that receive public funds as general support. In Open Records Decision No. 228 (1979), we considered whether the North Texas Commission (the “commission”), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, was a governmental body. *See* Open Records Decision No. 288 at 1. The commission’s contract with 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, this office 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 Commission with public funds within the meaning of [the predecessor to section 552.003].” *Id.* Accordingly, the commission was determined to be a governmental body for purposes of the Act. *Id.*

In Open Records Decision No. 602 (1992), we addressed the status of the Dallas Museum of Art (the “DMA”) under the Act. The DMA was a private, nonprofit corporation that had contracted with the City of Dallas to care for and preserve an art collection owned by the city and to maintain, operate, and manage an art museum. *See* Open Records Decision No. 602 at 1-2. The contract required the city to support the DMA by maintaining the museum building, paying for utility service, and providing funds for other costs of operating the museum. *Id.* at 2. We noted that an entity that receives public funds is a governmental body under the Act, unless the entity’s relationship with the governmental body from which it receives funds 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.” *Id.* at 4. We found that “the [City of Dallas] is receiving valuable services in exchange for its obligations, but, in our opinion, the very nature of the services the DMA provides to the [City of Dallas] cannot be known, specific, or measurable.” *Id.* at 5. Thus, we concluded that the City of Dallas provided general support to the DMA facilities and operation, making the DMA a governmental body to the extent that it received the city’s financial support. *Id.* Therefore, the DMA’s records that related to programs supported by public funds were subject to the Act. *Id.*

We additionally note that the precise manner of public funding is not the sole dispositive issue in determining whether a particular entity is subject to the Act. *See* Attorney General Opinion JM-821 at 3 (1987). Other aspects of a contract or relationship that involve the transfer of public funds between a private and a public entity must be considered in determining whether the private entity is a “governmental body” under the Act. *Id.* at 4. For example, 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” under section 552.003(1)(A)(xii) of the Government Code. The overall nature of the relationship created by the contract is relevant in determining whether the private entity is so closely associated with the governmental body that the private entity falls within the Act. *Id.*

In the present case, you inform us that the center is a non-profit, Texas corporation that entered into an economic development grant agreement with the City of San Angelo Development Corporation (the “city”), another non-profit, Texas corporation, to provide business accelerator services in Concho Valley and to conduct and award grants through an annual business plan competition. You explain that the terms of the agreement impose very specific obligations on the center to satisfactorily perform contracted services. You have provided a copy of the agreement between the center and the city that sets forth the specified services that the center will provide in consideration for a sum of money.

After review of your arguments and the submitted information, we find that the center does not fall within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code. Gov’t Code § 552.003. Although the center receives public grants from the city, the services the center provides the city constitute arms-length transactions as contemplated in Open Records Decision No. 602 (1992). Based on your arguments and the information submitted, we conclude that the center is not a governmental body under the Act. Accordingly, the center need not comply with this request for information.³

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.

³As our ruling is dispositive, we need not address the remaining arguments.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/mcf

Ref: ID# 314291

Enc. Submitted documents

c: B. Woodward
c/o Ms. Donna Osborne
Executive Director
Concho Valley Center for
Entrepreneurial Development
2009 West Beauregard
San Angelo, Texas 76901
(w/o enclosures)

Mr. Doe Jon
c/o Ms. Donna Osborne
Executive Director
Concho Valley Center for
Entrepreneurial Development
2009 West Beauregard
San Angelo, Texas 76901
(w/o enclosures)

Ms. Lisa Maciejewski
Gold Star Medical
5205 North Bentwood Drive
San Angelo, Texas 76904
(w/o enclosures)

Mr. Mark Dumolt
Cardi-Air Ambulance Service
8726 Hanger Road, Suite B
San Angelo, Texas 76904
(w/o enclosures)

Mr. John Ramirez
Gisselle's
307 North Oakes
San Angelo, Texas 76904
(w/o enclosures)

Mr. Greg Niehues
Texas Air Solutions, Inc
155 Las Lomas Drive
San Angelo, Texas 76904
(w/o enclosures)

Mr. Mike Poulter
Acme Millwork, Inc.
4101 Townview Lane
San Angelo, Texas 76901
(w/o enclosures)

Dr. Bryan Vincent
Agilight, Inc.
3669 Porter Henderson Trail
San Angelo, Texas 76905
(w/o enclosures)

Ms. Angie Conley
TLC in Home Care, Inc.
2009 West Beauregard
San Angelo, Texas 76901
(w/o enclosures)

Mr. Ken Barton
Fletch Data, L.L.C.
2009 West Beauregard
San Angelo, Texas 76901
(w/o enclosures)

Mr. Robert Derby
MyMail Technology
2009 West Beauregard
San Angelo, Texas 76901
(w/o enclosures)

Ms. Jody Waters
Scrapbook University
115 South Garrett
San Angelo, Texas 76901
(w/o enclosures)

Mr. Joe Sabine
Sabine Enterprises
dba GripUS.com & Seven Year Etch
2738 Foster Street
San Angelo, Texas 76904
(w/o enclosures)

Mr. Robin Miller
Healthcare
ReimbursementConsultants
1722 Greenwood Street
San Angelo, Texas 76901
(w/o enclosures)

Mr. Joe Hyde
Aaggregate Media, L.L.C.
11606 Twin Lakes Lane
San Angelo, Texas 76904
(w/o enclosures)

Mr. Don Taylor
Account Control Technology
2009 West Beauregard
San Angelo, Texas 76901
(w/o enclosures)

Ms. Grace Felder
Hands of Grace
238 Burlington Road
San Angelo, Texas 76901
(w/o enclosures)

Ms. Melanie Robledo
Angelo Kidney Connection
P.O. Box 61074
San Angelo, Texas 76906
(w/o enclosures)

Mr. Aaorn Duhon
New Life Computer and
Electronic
Recycling
P.O. Box 2351
San Angelo, Texas 76902
(w/o enclosures)