



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 17, 2009

Ms. Bettye Lynn
Ms. Julia Gannaway
Lynn Pham & Ross, LLP
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2009-03481

Dear Ms. Lynn and Ms. Gannaway:

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# 336105.

The Nacogdoches/Nacogdoches County Economic Development Corporation ("NEDCO"), which you represent, received a request for information relating to "the building and/or operation of a private prison/correctional facility in the city or county of Nacogdoches." You contend that the requested information is not subject to disclosure because NEDCO is not a governmental body that is subject to the Act. Nevertheless, you state that NEDCO will release information that is responsive to this request. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.104, 552.105, 552.110, and 552.131 of the Government Code. You also believe that this request for information implicates the proprietary interests of Management & Training Corporation ("MTC"). You notified MTC of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We received correspondence from MTC. We have considered all of the submitted arguments and

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

reviewed the information you submitted.² We also have considered the comments that we received from the requestor.³

We begin with your contention that NEDCO is not a governmental body. The Act defines the term "governmental body" as encompassing "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). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). The determination of whether a particular entity is a governmental body for the 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, 360-62 (Tex. App.—Waco 1998, pet. denied). 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 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. Thus, NEDCO would be considered to be a governmental body that is subject to the Act if it spends or is supported in whole or in part by public funds.

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 (quoting 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

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes NEDCO to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

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. The *Kneeland* court ultimately concluded that the National Collegiate Athletic Association (the "NCAA") and the Southwest Conference (the "SWC"), both of which received public funds, were not "governmental bodies" for the purposes of the Act, because both provided specific, measurable services in return for those funds. *See id.* 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 Southwest Conference 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* ORD 228 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 section 2(1)(F)." *Id.* Accordingly, the commission was determined to be a governmental body for the 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* ORD 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 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 involves 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 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 this instance, you explain that NEDCO is a non-profit corporation with approximately 64 public and private dues-paying members. You have provided a copy of NEDCO's bylaws. You inform us that NEDCO's purposes, as defined in its bylaws, include "conduct[ing] and develop[ing] an economic and industrial development association to promote, assist, stimulate and enhance economic development within the Nacogdoches, Nacogdoches County, area" and "creat[ing] economic enhancement and development and employment opportunities for the benefits [sic] of all residents." You also inform us that NEDCO has a "Professional Services Contract" (the "contract") with the City of Nacogdoches (the "city"). You have provided a copy of the contract. Article I of the contract, titled "Services," states, among other things:

In consideration of [c]ity's agreement to pay monies to NEDCO from its utility and tax revenue . . . NEDCO agrees to undertake economic development activities for the promotion and assisting of retail, industrial and

manufacturing business to relocate to Nacogdoches and Nacogdoches County and to further the expansion or retention of existing local business, so as to reduce unemployment and underemployment and to increase the local tax base[.]

Article I also lists various services that NEDCO agrees to provide to the city and provides that NEDCO "shall submit for [c]ity [c]ommission review a comprehensive program of action (marketing plan) for each fiscal year."

Article III of the contract, "Compensation," provides as follows:

For services in the industrial and manufacturing business relocation and expansion or retention of existing local business, and for relocation or expansion of retail business[,] the [c]ity shall pay NEDCO the annual lump sum of \$95, 000.00.

You contend that in return for the annual compensation that it receives from the city, "NEDCO provides a specific and definite obligation to provide a measurable amount of service during each fiscal year." You list some of NEDCO's responsibilities under the contract and note that NEDCO must submit a comprehensive marketing plan and progress reports to the city commission. Having considered your arguments and reviewed the contract, we find that NEDCO receives general financial support from the city under the contract in exchange for the contractual services that NEDCO provides to the city. In light of the contract, we also find that NEDCO and the city share a common purpose and objective, such that an agency-type relationship exists between the parties. *See* Open Records Decision No. 621 at 7 n.10 (1993); *see also* Loc. Gov't Code § 380.001(a)-(b) (governing body of municipality may establish and provide for administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of municipality, to promote state or local economic development and stimulate business and commercial activity in municipality). Moreover, the services that NEDCO provides to the city under the contract generally constitute traditional governmental functions. *See* ORD 621 at 7 n.10.

Therefore, we conclude that NEDCO is a governmental body under section 552.003(1)(A)(xii) of the Government Code to the extent of its receipt of the city's financial support for NEDCO's services. *See* ORD 621 at 5-9 (as consequence of Economic Development Partnership Agreement with City of Arlington, Arlington Economic Development Foundation was governmental body, as was Arlington Chamber of Commerce to extent of its receipt of public funds from foundation to perform economic development activities), 602 at 5. Consequently, information relating to the services that NEDCO provides in exchange for the financial support that it receives from the city is subject to disclosure under the Act as public information. *See* Gov't Code §§ 552.002, .021; ORD 621 at 9 (information relating to economic development activities Arlington Chamber of

Commerce performed on behalf of the Arlington Economic Development Foundation was subject to Act).

You also inform us that some of the submitted information is related to matters other than the one that is the subject of the instant request for information. We agree that the information relating to those matters, which you have marked, is not responsive to this request. This decision does not address the public availability of that information, and NEDCO need not release that information in response to this request. Otherwise, we find that the responsive submitted information is subject to the Act and must be released, unless it is demonstrated to fall within the scope of an exception to public disclosure. *See id.* §§ 552.006, .221, .301, .302. Accordingly, we will address NEDCO's and MTC's exceptions to disclosure of the submitted responsive information.⁴

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Both NEDCO and MTC raise section 552.101 in conjunction with Federal Acquisition Regulation ("FAR") 52.215-1.⁵ *See* 48 C.F.R. ch. 1 subch. H pt. 52 subpt. 52.2. FAR 52.215-1, which is titled "Instructions to Offerors – Competitive Acquisition," prescribes procedures relating to the submission of proposals for contracts with the federal government. FAR 52.215-1(e) provides as follows:

(e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall –

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed – in whole or in part – for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of – or in connection with – the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the

⁴We note that some of the information at issue has been redacted from the submitted documents. In this instance, we are able to ascertain the nature of the information in question and thus are not prevented from determining whether it is exempted from public disclosure. In the future, however, NEDCO should refrain from redacting any information that is submitted to this office for the purpose of requesting a decision under the Act, unless the information is the subject of a previous determination or a social security number that a governmental body may redact under section 552.147(b) of the Government Code without requesting a decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001) (previous determinations).

⁵We note that a federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

FAR 52.215-1(e). MTC contends that FAR 52.215-1 makes confidential MTC's proposal to the federal Bureau of Prisons (the "BOP") for a contract to build a private federal prison facility. NEDCO contends that FAR 52.215-1 protects "information relating to the procurement of a private federal minimum corrections facility," because "[t]hat process is on-going and public release of this information would and could cause substantial harm to the contracting entity here: the federal government." With respect to MTC's claim under FAR 52.215-1, we note that the responsive information does not include MTC's proposal to the BOP. Moreover, NEDCO's attorneys have informed this office that NEDCO is not in possession of a copy of MTC's proposal.⁶ Accordingly, we need not determine whether MTC's proposal would be confidential under section 552.101 of the Government Code in conjunction with FAR 52.215-1.⁷ With respect to NEDCO's claim under FAR 52.215-1 for information "relating to" MTC's proposal, we note that FAR 52.215-1(e) is applicable only to the proposal itself. As previously noted, NEDCO's attorneys have informed this office that NEDCO is not in possession of a copy of MTC's proposal. Moreover, NEDCO has not informed us, and the submitted responsive information itself does not otherwise reflect, that any of the responsive information is contained in MTC's proposal. We therefore conclude that NEDCO may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with FAR 52.215-1.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The protections of section 552.104 serve two purposes. One purpose is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. *See* Open Records Decision No. 541 (1990). The other purpose is to protect the legitimate marketplace interests of a governmental body when acting as a competitor in the marketplace. *See* Open Records Decision No. 593 (1991). In both instances, the governmental body must

⁶We note that the Act does not require NEDCO to release information that did not exist when it received this request, create responsive information, or obtain information that is not held by NEDCO or on NEDCO's behalf. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

⁷Likewise, we need not address MTC's arguments under section 552.110 of the Government Code, which also are confined to information in MTC's proposal to the BOP.

demonstrate actual or potential harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See* ORD 593 at 2. We note that section 552.104 does not protect the interests of private parties such as MTC. *See* ORD 592 at 8. Accordingly, we will not consider MTC's claim under section 552.104. However, we will address NEDCO's assertion of this exception.

NEDCO states that "MTC is waiting for the federal procurement process to run its course." NEDCO contends that because the BOP has not issued a contract, release of the information that NEDCO seeks to withhold under section 552.104 "would cause substantial competitive harm to MTC and/or give advantage to a competitor from another location." As previously noted, section 552.104 protects the interests of governmental bodies, not those of private parties such as MTC. *See* ORD 593 at 2. Thus, information may not be withheld under section 552.104 to protect MTC's interests. *See* ORD 592 at 8. We find that NEDCO has not demonstrated that the release of the responsive information would result in any actual or potential harm to NEDCO's interests in a particular competitive situation. We therefore conclude that NEDCO may not withhold any of the responsive information under section 552.104 of the Government Code.

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information pertaining to such negotiations that is excepted from disclosure under section 552.105 may be withheld so long as the transaction relating to the negotiations is not complete. *See* ORD 310. Under section 552.105, a governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" ORD 357 at 3 (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiating position in regard to particular transactions is a question of fact. Thus, this office will accept a governmental body's good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564.

Both NEDCO and MTC state that some of the submitted information is related to the acquisition of a site for the prison that MTC proposes to build. NEDCO also states, however, that "the location(s) [of property for the prison] have been discussed publicly." In this regard, we note that a photo of the proposed site of the prison is posted on NEDCO's

internet website, along with a precise description of the location of the property.⁸ Thus, we find that the parties have not demonstrated that release of any of the responsive information would impair a governmental body's planning and negotiating position regarding a particular transaction. *See* ORD 357 at 3. We therefore conclude that NEDCO may not withhold any of the responsive information under section 552.105 of the Government Code.

Both NEDCO and MTC also raise section 552.131 of the Government Code, which provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* Thus, the protection provided by section 552.131(a) is co-extensive with that afforded by section 552.110. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 (1990), 661 (1999).

Having considered NEDCO's and MTC's claims under section 552.131, we find that neither of the parties has demonstrated that any of the submitted information constitutes a trade secret of MTC for the purposes of section 552.110(a). *See* Gov't Code § 552.110(a); ORD 552 at 5 (if governmental body takes no position on application of Gov't Code § 552.110(a) to information at issue, attorney general will accept private person's claim as valid if person establishes a *prima facie* case for exception and no one submits argument that

⁸The information in question is located at <http://www.nedco.org> in a document titled "Quick Facts About Proposed Correctional Facility."

rebutts claim as matter of law).⁹ Likewise, we find that neither of the parties has demonstrated that the submitted documents contain any responsive commercial or financial information whose disclosure would cause MTC substantial competitive harm. *See Gov't Code § 552.110(b)*; ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). We therefore conclude that NEDCO may not withhold any of the responsive information under section 552.131(a) of the Government Code.

Section 552.131(b) protects information relating to a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See Gov't Code § 552.131(b)*. This aspect of section 552.131 protects the interests of governmental bodies, not those of third parties. NEDCO has not demonstrated that the responsive information reveals any financial or other incentive that either NEDCO or the city is offering to a business prospect. We therefore conclude that NEDCO may not withhold any of the responsive information under section 552.131(b) of the Government Code.

We note that sections 552.117, 552.136, and 552.137 of the Government Code are or may be applicable to some of the remaining information.¹⁰ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See id.* §§ 552.117, .024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former

⁹The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

¹⁰Unlike other exceptions to disclosure under the Act, this office will raise sections 552.117, 552.136, and 552.137 on behalf of a governmental body, as these exceptions are mandatory and may not be waived. *See Gov't Code §§ 552.007, .352*; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

official or employee who did not timely request under section 552.024 that the information be kept confidential. We have marked information that NEDCO must withhold under section 552.117(a)(1) if the information pertains to an employee of NEDCO who timely requested confidentiality for the marked information under section 552.024.

Section 552.136 of the Government Code provides in part that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We have marked bank account and routing numbers that NEDCO must withhold under section 552.136.

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked personal e-mail addresses that NEDCO must withhold under section 552.137, unless the owner of an e-mail address has affirmatively consented to its public disclosure.

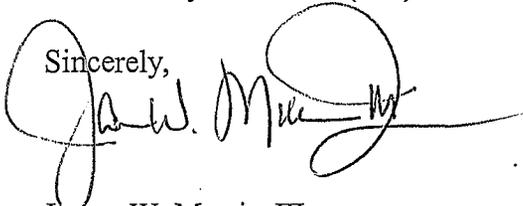
Lastly, we note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) NEDCO must withhold the information that we have marked under section 552.117(a)(1) of the Government Code if the information pertains to an employee of NEDCO who timely requested confidentiality for the information under section 552.024 of the Government Code; (2) NEDCO must withhold the marked bank account and routing numbers under section 552.136 of the Government Code; and (3) NEDCO must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owner of an e-mail address has affirmatively consented to its public disclosure. The rest of the responsive information must be released. Any information that is protected by copyright must be released in accordance with copyright law.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

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

JWM/cc

Ref: ID# 336105

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Ms. Dawn M. Call
Management & Training Corporation
P.O. Box 10
Centerville, Utah 84014
(w/o enclosures)