



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2011

Mr. Gregory T. Mays
General Counsel
Dallas Housing Authority
3939 North Hampton Road
Dallas, Texas 75212

OR2011-02371

Dear Mr. Mays:

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# 407951.

The Dallas Housing Authority (the "authority") received a request for the following information pertaining to the compensation of the authority's CEO/Executive Director for a specified time period: (1) the CEO/Executive Director's contracts; (2) any resolutions or documentation that changed the CEO/Executive Director's benefits; (3) bonuses or incentive pay paid to the CEO/Executive Director; (4) the value of the benefits received or to be received by the CEO/Executive Director; and (5) the annual salary of all CEO/Executive Directors. You state that the authority will release information related to item two of the request to the requestor. You have submitted a copy of the contract of the authority's current CEO/Executive Director and state that the contract contains information responsive to the remainder of the request. You claim that "such contracts . . . are not public information for purposes of the Act[.]" We have considered your argument and reviewed the submitted information.

The Act requires "governmental bodies" to make public, with certain exceptions, information in their possession. 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)(xii). Courts, as well as this office, have previously considered the scope of the Act’s definition of “governmental body.” For example, in *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), an appellate court examined the financial relationship between Texas public universities and the National Collegiate Athletic Association (“NCAA”) to determine whether the NCAA was a governmental body within the statutory predecessor to section 552.003(1)(A)(xii). 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.

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 at 2 (1987), quoting Open Records Decision No. 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.’” *Id.* at 3. 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.*

As stated above, an entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under section 552.003(1)(A)(xii) of the Government Code. In Open Records Decision No. 509 (1988), this office concluded that a private nonprofit corporation established under the federal 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. ORD 509 at 2. The decision noted that federal funds were initially distributed to the state and then allocated among the programs at issue. *Id.* 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. *Id.* at 3. Furthermore, in Open Records Decision No. 563 (1990), this office held that “[f]ederal funds deposited in the state treasury become state funds.” ORD 563 at 5 (citing Attorney General Opinions JM-118 (1983); C-530 (1965)). However, if only a distinct part of an entity is supported by public funds within the meaning of section 552.003(1)(A)(xii) of the Government Code, only the records relating to that part supported by public funds are subject to the Act, and records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992) (only records of those portions of Dallas Museum of Art directly supported by public funds are subject to Act).

You state that the authority's CEO/Executive Director is paid solely out of non-public funds received by the authority's Central Office Cost Center (the "COCC"), a federally mandated business unit of the authority. You state that the COCC provides the authority with administrative, financial, and personnel services, and funds these services through management fees and "fee-for-service" monies collected from federally subsidized properties. 24 C.F.R. Part 990. We agree that the funding received from the COCC does not consist of "public funds" as defined by section 552.003(5) of the Government Code. *See* Gov't Code § 552.003(5). Accordingly, we find that the portion of the authority supported solely by funding from the COCC is not a governmental body. *See id.* § 552.003(1)(A)(xii). Because the employment contracts at issue are funded by COCC fee income, and not state or local funding, we determine such contracts do not constitute public information for purposes of the Act. *See id.* Thus, such contracts are not subject to the Act, and the authority is not required to release this information pursuant to the Act.

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 407951

Enc. Submitted documents

c: Requestor
(w/o enclosures)