



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 23, 2011

Mr. Glen Bernstein  
President - Board of Directors  
College Park Village Association  
P.O. Box 8001  
The Woodlands, Texas 77387

OR2011-02680

Dear Mr. Bernstein:

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# 409887.

The College Park Village Association (the "association") received a request for the association's 2008, 2009, and 2010 check registers.<sup>1</sup> We understand you to claim the requested information is not subject to the Act because the association is not a governmental body for purposes of the Act. We have considered your arguments. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we address the threshold issue of whether the association is subject to the Act. The Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code. 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[.]" *Id.* § 552.003(1)(A)(xii). The term "public funds" is defined in the Act as "funds of the state or of a governmental subdivision of the state." *Id.* § 552.003(5).

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<sup>1</sup>As you have not submitted the request for information for our review, we take our description from correspondence the requestor submitted to our office.

Both the courts and this office have previously 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 (internal quotations omitted) (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* [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.’” 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 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. Attorney General Opinion JM-821 at 4 (1987).

In the present case, the requestor has submitted documentation demonstrating The Woodlands Association (“TWA”) provided the association with \$10,000 in funding each year for the years 2008 and 2009. The requestor’s documentation also reflects the association received \$10,000 in funding for the year 2010 from The Woodlands Township (the “township”). You acknowledge the association received funding from the township pursuant to a service agreement. We first address the funds from TWA.

TWA is a property owner’s association that is subject to the Act pursuant to section 552.0036 of the Government Code. *See* Gov’t Code § 552.0036 (providing certain classes of homeowners’ associations are subject to the Act). As mentioned above, it appears TWA provided funding to the association. Although TWA is subject to the Act, it is not a

governmental subdivision of the state. Thus, the funds the association received from TWA are not “funds of the state or of a governmental subdivision of the state” and, therefore, are not “public funds” for purposes of the Act. *Id.* § 552.003(5). Accordingly, we find the portions of the requested check registers pertaining to funds received from TWA in the years 2008 and 2009 are not subject to the Act and need not be released in response to this request for information.

We next address the funds received from the township. The township is a governmental body for purposes of the Act.<sup>2</sup> You inform us the association is an association of residents that reside in a certain area of the township. As previously noted, you state the association has received funds from the township pursuant to a service agreement between the association and the township. You argue the association acted as a vendor to the township, the funds received from the township were a payment for services, and the funds “should be considered no different than any payment by the [t]ownship to any other vendor.”

Pursuant to section 552.303(c) of the Government Code, this office notified the association by letter that we require a copy of the executed service agreement and a detailed explanation of the association’s relationship with the township, especially in relation to the association receiving funds from the township. *See id.* § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). As of this date, however, the association has not provided the requested information. Because the association has not provided a copy of the service agreement or any further explanation of the relationship between the association and the township, we have no way of determining the exact nature of the relationship created by the service agreement between the association and the township. Consequently, without sufficient evidence to the contrary, we determine the association’s receipt of public funds from the township makes the association a governmental body for purposes of the Act to the extent it is supported by those funds. *See id.* § 552.003(1)(A)(xii).

We note, however, an organization is not necessarily a “governmental body” in its entirety. “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” is a governmental body. *Id.* (emphasis added); *see also* Open Records Decision No. 602 (1992) (only the records of those portions of the Dallas Museum of Art that were directly supported by public funds are subject to the Act). Consequently, only records relating to those parts of the association’s operations that are directly supported by public funds are subject to the disclosure requirements of the Act. Therefore, we find the portions of the check registers that relate to operations directly supported by the funding received from the township are subject to the Act. Accordingly, this information must be released unless the association demonstrates this information falls within an exception to public disclosure under the Act.

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<sup>2</sup>In November 2007, the township succeeded the Town Center Improvement District, which was formed by the Texas Legislature in 1993.

Finally, we address the association's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires a governmental body to ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. Gov't Code § 552.301(b). Section 552.301(e) of the Government Code requires the governmental body to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the written request was received, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). As of the date of this letter, you have not submitted to this office correspondence stating any exceptions that would allow the requested information to be withheld and written comments as to why such exceptions apply to the information at issue, a copy of the written request for information, evidence demonstrating the date the request for information was received, or a copy or representative sample of the requested information. Consequently, to the extent the requested check registers relate to those parts of the association's operations that are directly supported by public funds, we find the association has failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because you have not submitted any arguments demonstrating how the requested information that is subject to the Act is excepted from required public disclosure, the association must release such information pursuant to section 552.302 of the Government Code.

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](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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 409887

No submitted documents

c: Requestor