



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2011

Ms. Connie Fox  
Chief Operating Officer  
University of Houston Alumni Association  
P.O. Box 230345  
Houston, Texas 77223-0345

OR2011-05663

Dear Ms. Fox:

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# 415263.

The University of Houston Alumni Association (the "association") received a request for its general ledger for the most recent fiscal year and the applicable chart of accounts. You claim that the requested information is not subject to the Act because the association is not a governmental body for purposes of the Act, and, in the alternative, the information is excepted from disclosure under sections 552.114 and 552.1235 of the Government Code. We have considered your arguments and reviewed the submitted information.

The Act defines "governmental body" in pertinent 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). "Public funds" means "funds of the state or of a governmental subdivision of the state." *Id.* § 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). 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 (1987). Thus, the association would be considered a governmental body 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 [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."

*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 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. *Id.* at 226. 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. *Id.* at 231. 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.*; *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* 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 [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* 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.*

In Attorney General Opinion MW-373 (1981), this office examined the University of Texas Law School Foundation (the "UT Law Foundation"), a nonprofit corporation that solicited donations and expended funds to benefit the University of Texas Law School (the "law school"). Pursuant to a Memorandum of Understanding, law school provided the UT Law Foundation space in the law school building to carry out its obligations, utilities and telephone services, and reasonable use of law school equipment and personnel to coordinate the activities of the UT Law Foundation with the educational operations of the law school. This office found such services amounted to support for purposes of the Act and concluded "[s]ince the [UT Law] [F]oundation receives support from the [law school] that is financed by public funds, its records relating to the activities supported by public funds will be subject to public scrutiny." Attorney General Opinion MW-373 at 11 (citing ORD 228). The opinion noted that the purpose of the UT Law Foundation was to raise funds and provide resources for the benefit of the law school, and considered that the provision of office space and other assistance enhanced the cost effectiveness of operating the UT Law Foundation. Further, the opinion noted that the law school retained control over the relationship of the UT Law Foundation and the law school through the authority of the law school board of regents to control the use of law school property. *Id.* Thus, since the UT Law Foundation received general support from the law school, and the law school is financed by public funds, the UT Law Foundation was found to be a governmental body for purposes of the statutory predecessor of the Act. Therefore, the UT Law Foundation's records relating to the activities supported by public funds are subject to public disclosure. *Id.*

In this instance, you state the association is a nonprofit corporation that is separately incorporated from the University of Houston (the "university"). You have provided a portion of the association's ledger showing that it is funded, in part, by private donations and gifts. You have provided our office with copies of the association's Articles of Incorporation and Bylaws, as well as a copy of the Alumni Relations Agreement (the "agreement") between the association and the university. You note the agreement acknowledges that the association is "a separate, independent, not-for-profit, tax-exempt corporation, maintaining the direction over its general and fiscal policies, its employees, management of its affairs and operations." Further, you state the association preforms services for the university, including "updating the [u]niversity's alumni database to support [u]niversity fund raising[,] producing and distributing publications to inform alumni about the [u]niversity[,] sponsoring activities and events to encourage alumni support of intercollegiate athletics[,] and sponsoring public affairs programs designed to enhance the visibility and stature of the [u]niversity and its alumni." In return, the association receives compensation from the university in the form of cash payment and university paid services and compensation. You state the university paid services and compensation has a definite cash value, which is detailed in the agreement. You

state the university has agreed to permit reasonable use of university equipment and personnel as needed to coordinate the activities of [the association].” However, you note that the association and the university “have agreed to execute annual written agreements setting forth a reasonable sum to be paid by [the association] to the university for such use.” Therefore, you argue the association provides specific measurable services to the university in exchange for definite consideration. Based on the information provided to our office, we find that the agreement between the association and the university establishes a *quid pro quo* relationship between the two parties. Therefore, we conclude the association is not supported in whole or in part by public funds, and thus does not constitute a governmental body for purposes of the Act. Accordingly, the association need not respond to the present request for information.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/tf

Ref: ID# 415263

Enc. Submitted documents

c: Requestor  
(w/o enclosures)