



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2011

Ms. Angela Ungles
Westlake Volunteer Fire Department
P.O. Box 395
Dayton, Texas 77535

OR2011-10779

Dear Ms. Ungles:

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# 425189.

The Westlake Volunteer Fire Department (the "department") received a request for financial reports, minutes, rosters, and training records for a specified time period. You claim the department is not a governmental body subject to the Act. We have considered your arguments. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 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 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 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 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. 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 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 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* 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 “[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 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 “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 the City of Dallas provided general support to the DMA facilities and operation, making the DMA a governmental body to the extent 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.* However, those areas for which the city had not provided support were not subject to the Act. *Id.*

We note 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 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.*

“Whether or not a particular nonprofit volunteer fire department [is a governmental body subject to the Act] depends on the circumstances in each case, including the terms of the contract between the department and the public entity.” *Id.* at 5 (1987) (citation omitted). Because fire protection is one of the services traditionally provided by governmental bodies, different considerations apply to fire departments that set them apart from private vendors of goods and services who typically deal with governmental bodies in arms-length transactions and make them more likely to fall within the Act. *Id.* In Attorney General Opinion JM-821, this office held the Cy-Fair Volunteer Fire Department (“Cy-Fair”) was a governmental body for purposes of the Act’s predecessor to the extent it was supported by public funds received pursuant to its contract with the Harris County Rural Fire Prevention District No. 9 (“RFPD”). *See id.* In issuing that opinion, this office analyzed the contract between Cy-Fair and RFPD, noting Cy-Fair received public funds to provide all of RFPD’s needed services. *See id.* This office also noted the contract provided Cy-Fair must submit one-year operating budgets and a three-year capital expenditure budget to RFPD for approval. Consequently, this office found the contract provided for the general support of Cy-Fair for purposes of the Act’s predecessor. *Id.*

You have sent a certificate of incorporation from the Secretary of State showing the department is a private Texas corporation. You inform us, and provide documentation showing, the department contracts with the Liberty County Emergency Services District 3 (the “ESD”) to provide fire protection to the ESD. You state the department does not rely “solely on any funds from the ESD,” but also maintains a separate account with funds that are donated or from fundraisers. You have provided us with a copy of the contract between the department and the ESD that was in effect when the department received the request for information. We note the contract between the department and the ESD involves the general support of the activities of the department with public funds. The contract provides:

The [ESD] and [d]epartment do hereby enter into a contract to fight and prevent fires in the geographic area identified as Fire District #3.

Thus, the department receives public funds to provide all of the ESD’s needed services. Additionally, the contract requires the department to submit to the ESD a complete financial report after the end of the fiscal year, as well as a copy of receipts and expenditure each month. Consequently, based on your representations, our review of the contract between the department and the ESD, and our holding in Attorney General Opinion JM-821, we find the ESD provides general support to the department, making the department a governmental body pursuant to section 552.003. *See* Attorney General Opinion JM-821 at 5 (1987); *see also* Gov’t Code § 552.003(1)(A)(xii); Open Records Decision No. 621 (1993) (although Arlington Economic Development Foundation receives private contributions, entire foundation is governmental body under section 552.003 because city’s public funds provide

general support for operation of foundation and all information in foundation's possession must be released unless Act's exceptions apply). Accordingly, the department's records are subject to the disclosure requirements of the Act.

Finally, we address the department'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 or a copy or representative sample of the requested information. Consequently, we find the department 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 is excepted from required public disclosure, the department 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, 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 black ink, appearing to read 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 425189

No enclosures

c: Requestor