



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2011

Ms. Vanessa Russell-Evans  
Cox Smith Attorneys  
112 East Pecan Street, Suite 1800  
San Antonio, Texas 78205

OR2011-15091

Dear Ms. Russell-Evans:

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# 433143.

The Family Service Association of San Antonio, Inc. (the "FSA"), which you represent, received a request for all correspondence pertaining to the employment of the requestor's client. You claim the FSA is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

The Act applies to "governmental bodies," as that term is defined in section 552.003(1)(A) of the Government Code. According to that section, a "governmental body" includes

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). Further, 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 [predecessor of 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).

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 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* Open Records Decision No. 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 additionally 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* JM-821 at 3; Open Records Decision No. 621 at 9 (1993). Other aspects of a contract or relationship may make

it more likely that a particular entity will fall within the Act. JM-821 at 3. 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 may bring the private entity within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code. *See id.*; ORD 621 at 11 n.10. Some entities will be considered governmental bodies if they provide services traditionally provided by governmental bodies. *Id.* 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.*

You explain “[the FSA] is a private, Texas non-profit corporation which provides a diverse array of social, mental health[,] and educational services to the citizens of San Antonio and the surrounding communities.” You also explain, and provide documentation reflecting, that the FSA was awarded a grant from the Texas Veterans Commission (the “commission”) to provide services to veterans, such as counseling, parenting education, and children’s support, with the end goal of strengthening veterans’ families. You state, and the submitted contract reflects, the FSA may only use the grant funds “for approved services benefitting Texas veterans and their families” and that the FSA is required to submit and receive commission approval on periodic expenditure and program performance reports. You explain the FSA only received payment from the grant in exchange for the commission-approved specific services and commission payment was not used for the FSA’s general support. Therefore, you argue, and we agree, the FSA provides specific measurable services to the commission in exchange for specific sums of money. Accordingly, we find that the FSA is not a governmental body under the Act. *See Gov’t Code § 552.003(1)(A); ORD 228 at 2.*

However, as stated above, an entity’s records related to programs supported by public funds are subject to the Act. *See ORD 602 at 4.* In this instance, we find the FSA receives public funds from the commission in relation to the veterans services program and grant at issue. Thus, we find those records relating to the expenditure of the grant funds and the performance of the funded program are subject to disclosure. We note the requestor’s client is a former FSA employee who worked as a Family Advocate/Coordinator in the veteran families services program at issue. However, the information at issue consists of e-mail communications concerning the requestor’s client’s employment with the FSA. Upon review, we find that because the submitted e-mail communications do not pertain to the grant funds or performance of the veteran program, this information does not constitute public information for purposes of the Act, and the FSA is not required to respond to this 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/ag

Ref: ID# 433143

Enc. Submitted documents

c: Requestor  
(w/o enclosures)