



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2011

Mr. Dulan D. Elder  
Mr. Don R. Richards  
Richards, Elder & Green, L.L.P.  
P.O. Box 64657  
Lubbock, Texas 79464-4657

OR2011-15645

Dear Mr. Elder and Mr. Richards:

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# 432615.

Hill Country Telephone Cooperative, Inc. ("HCTC"), which you represent, received a request for information relating to the travel expenses of two named individuals for a specified time period. You contend HCTC is not a governmental body subject to the Act. You also claim the requested information is excepted from disclosure under section 552.110 of the Government Code. We have considered your arguments. We also have considered the comments we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

The Act requires a "governmental body" to make information that is within its possession or control available to the public, with certain statutory exceptions. *See id.* §§ 552.002(a), .006, .021. 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). Section 552.003(5) defines "public funds" as meaning "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(5).

According to the bylaws published on its website, HCTC is a cooperative organized and operating under the Telephone Cooperative Act, chapter 162 of the Utilities Code. *See generally* Util. Code ch. 162. You inform us HCTC pays fees to and "receives moneys" from the Texas Universal Service Fund (the "TUSF") under section 56.021 of the Utilities Code. You contend, however, the TUSF is an "internal industry funding mechanism." You argue that HCTC "does not spend or receive public funds, nor is any part of HCTC supported by public funds," and that HCTC "is not a governmental body by virtue of such funding."

Having considered your arguments, we note the TUSF is administered by the Public Utility Commission of Texas (the “PUC”) under chapter 56 of the Utilities Code and rules adopted by the PUC. *See id.* § 56.023 (commission powers and duties); 16 T.A.C. ch. 26 subch. P. The TUSF is intended to “assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas under two plans,” including “the Small and Rural Incumbent Local Exchange Company Universal Service Plan (16 T.A.C. Section 26.404)[.]” Util. Code § 56.021(1)(B). Section 26.404 of title 16 of the Texas Administrative Code establishes the Small and Rural Incumbent Local Exchange Company Universal Service Plan, also known as the “small company area high-cost program.” *See* 16 T.A.C. § 26.404; *see generally* REPORT TO THE 80<sup>TH</sup> TEXAS LEGISLATURE: REVIEW AND EVALUATION OF THE TEXAS UNIVERSAL SERVICE FUND PURSUANT TO [UTILITIES CODE] SECTION 56.029 at 35 (January 2007) (Public Utility Commission of Texas) (the “TUSF REPORT”). The purpose of the small company area high-cost program is to provide financial assistance to eligible telecommunications providers that serve high-cost rural areas of Texas, so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner. *Id.* at 41.

We understand HCTC receives monthly support as a participant in the small company area high-cost program pursuant to section 56.021 of the Utilities Code and section 26.404 of title 16 of the Texas Administrative Code. *See id.* at 40 (listing participating entities). Thus, as you acknowledge, HCTC receives funding from the TUSF. However, HCTC does not become a governmental body for purposes of section 552.003(1)(A)(xii) of the Government Code simply by virtue of its receipt of financial support from the TUSF. Instead, HCTC falls within the scope of section 552.003(1)(A)(xii) only if the funds HCTC receives from the TUSF are “public funds” for purposes of section 552.003(5) of the Government Code. *See* Gov’t Code § 552.003(1)(A)(xii).

Section 56.022(a) of the Utilities Code states the TUSF “is funded by a statewide uniform charge payable by each telecommunications provider that has access to the customer base.” Util. Code § 56.022(a); *see also* TUSF REPORT at 5. Thus, the TUSF is financed by private rather than public entities. Moreover, the PUC has stated that “[t]he TUSF is operated as a fund outside of state government, and revenues from the assessment[s] on telecommunications providers] are not paid into or appropriated from a state fund.”<sup>1</sup> As such, the TUSF “has never been treated as state funds,”<sup>2</sup> but instead is “an operating account held outside the State Treasury[.]”<sup>3</sup>

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<sup>1</sup>PUBLIC UTILITY COMMISSION OF TEXAS SELF-EVALUATION REPORT at 204 (September 2009) (available online at <http://www.sunset.state.tx.us/82ndReports/PUC/SER.pdf> ).

<sup>2</sup>TEXAS PERFORMANCE REVIEW, THE FUTURE OF THE PUBLIC UTILITY COMMISSION IN TEXAS (available online at [http://www.window.state.tx.us/tpr/puc/puc\\_ch3.html#28a](http://www.window.state.tx.us/tpr/puc/puc_ch3.html#28a)).

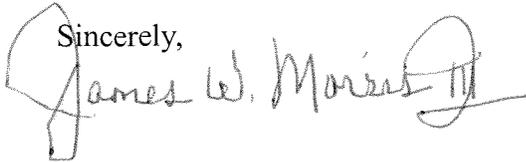
<sup>3</sup>ANNUAL FINANCIAL REPORT FOR THE YEAR ENDED AUGUST 31, 2010 (available online at [http://www.puc.state.tx.us/agency/resources/reports/financial/2010\\_State\\_AFR.pdf](http://www.puc.state.tx.us/agency/resources/reports/financial/2010_State_AFR.pdf)).

Thus, although it is administered by the PUC, the TUSF exists for the purpose of assisting telecommunications providers in providing basic local telecommunications service and is funded by the telecommunications providers themselves. Given the nature and purpose of the TUSF, the source of its funding, and the fact that TUSF funds are maintained outside the state treasury, we agree the funds HCTC receives from the TUSF are not public funds for purposes of section 552.003(5) of the Government Code. We therefore conclude HCTC is not a governmental body for purposes of section 552.003(1)(A)(xii) of the Government Code. Thus, the Act does not require HCTC to comply with the instant request for information, and we need not consider HCTC's other arguments against disclosure.

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 "James W. Morris, III". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 432615

c: Requestor