



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

Mr. Gregory T. Mays
Legal Counsel
Dallas Housing Authority
3939 North Hampton Road
Dallas, Texas 75212

OR2012-01236

Dear Mr. Mays:

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# 444555.

The Dallas Housing Authority (the "authority") received a request for the names, titles, and annual salaries of the authority's top five employees. We understand you to contend none of the requested information is subject to disclosure under the Act. We have considered your arguments and reviewed the submitted information.

We first note most of the submitted information does not pertain to the top five employees of the authority and thus is not responsive to the present request for information. This decision does not address the public availability of information that is not responsive to the request, and the authority need not release such information in response to the request.

Next, we address your arguments against disclosure of the responsive information. The Act requires "governmental bodies" to make public, with certain exceptions, information that is within their possession or control. *See* Gov't Code § 552.002(a). Section 552.003 of the Government Code defines "governmental body," in 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." *Id.* § 552.003(1)(A)(xii). Both courts and this office have previously considered the scope of the Act's definition of "governmental body." In *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), the federal court examined the financial relationship between Texas public universities and the National Collegiate Athletic Association ("NCAA") to determine

whether the NCAA was a governmental body within the statutory predecessor to section 552.003(1)(A)(xii). The *Kneeland* court noted the attorney general'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 at 2 (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. at 228. As previously noted, an entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under section 552.003(1)(A)(xii) of the Government Code. In Open Records Decision No. 509 (1988), this office concluded a private nonprofit corporation established under the federal Job Training Partnership Act and supported by federal funds appropriated by the state was a governmental body for purposes of the Act. In that case, we analyzed the state's role under the federal statute and concluded the state acted as more than a simple conduit for federal funds, in part because of the layers of decision-making and oversight provided by the state in administering the programs. *See* ORD 509 at 2. The decision noted federal funds were initially distributed to the state and then allocated among the programs at issue. *Id.* Citing Attorney General Opinions JM-716 (1987) and H-777 (1976), the decision observed that federal funds granted to a state are often treated as the public funds of the state. *Id.* at 3. Likewise, in Open Records Decision No. 563 (1990), this office held that "[f]ederal funds deposited in the state treasury become state funds." ORD 563 at 5 (citing Attorney General Opinions JM-118 (1983); C-530 (1965)). On the other hand, if only a distinct part of an entity is supported by public funds within the meaning of section 552.003(1)(A)(xii) of the Government Code, then only the records relating to the part of an entity that is supported by public funds are subject to the Act, and records relating to parts of the entity that are not supported by public funds are not subject to the Act. *See* Open Records Decision No. 602 (1992) (only records of those portions of Dallas Museum of Art directly supported by public funds were subject to Act).

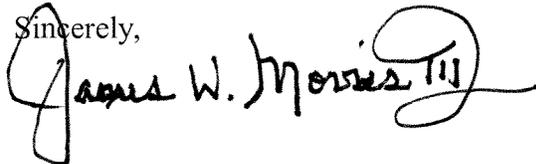
You state the responsive information pertains to positions that are paid solely out of non-public funds received by the authority's Central Office Cost Center (the "COCC"), a federally mandated business unit of the authority. You explain the COCC provides the authority with administrative, financial, and personnel services and funds those services

through management fees and “fee-for-service” monies collected from federally subsidized properties. *See* 71 Fed. Reg. 52, 710 (2006). You inform us no state or local funds are used to compensate persons in the positions in question. Based on your representations, we agree the funding received from the COCC does not consist of “public funds” as defined by section 552.003(5) of the Government Code. *See* Gov’t Code § 552.003(5). Accordingly, we find that the portion of the authority that is supported solely by funding from the COCC is not a governmental body. *See id.* § 552.003(1)(A)(xii). Because the responsive information pertains to positions that are funded by COCC fee income, and not state or local funding, we conclude the information in question does not constitute public information for purposes of the Act. *See id.* Thus, the responsive information is not subject to disclosure under the Act, and the authority is not required to release the information pursuant to the Act.

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 that reads "James W. Morris, III". The signature is written in a cursive style with a large, stylized initial "J".

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

JWM/em

Ref: ID# 444555

Enc: Submitted document

c: Requestor
(w/o enclosures)