



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 29, 2012

Mr. Bill Aleshire
Counsel for the Greater Houston Partnership
Riggs Aleshire & Ray
700 Lavaca Street, Suite 920
Austin, Texas 78701

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2012-03100

Dear Mr. Aleshire:

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# 447240.

The Greater Houston Partnership (the “partnership”), which you represent, received a request for a list of all vendors used by the partnership and contract amounts during a specified time period.¹ You argue the partnership is not a governmental body subject to the Act. We have considered your arguments.

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[.]” 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, 360-62 (Tex. App.—Waco 1998, pet. denied). In Attorney General Opinion JM-821 (1987), this office concluded “the primary issue in determining whether certain private entities are governmental bodies under the Act is whether they are

¹You state the partnership sought and received clarification of the information requested. *See* Gov’t Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

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 partnership 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 Ass’n*, 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” 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)) (internal quotations omitted). 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* [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. (omissions in original). 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. The NCAA and the SWC both 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 Southwest Conference 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. *Id.* 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 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 under the Act of the Dallas Museum of Art (the “DMA”). 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. *Id.* 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.*

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. Structuring a contract that involves public funds to provide a formula to compute a fixed amount of money for a fixed period of time will not automatically prevent a private entity from constituting a “governmental body” under section 552.003(1)(A)(xii). 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.* In addition, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision No. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”). You state the contracts the partnership enters into with governmental bodies expressly provide the services rendered are considered to be at arms-length, no agency relationship is created, and the funds received by the partnership are not for its general support. However, an entity may not contract away its status as a governmental body under the Act. The relevant inquiry is whether the facts surrounding the partnership and the nature of its relationships with the governmental bodies bring the partnership within the definition of a governmental body under the Act. *See* Gov’t Code § 552.003(1)(A).

In this case, the partnership has entered into contracts with the City of Houston (the “city”), Houston Airport System (the “airport”), Harris County (the “county”), and the Port of Houston Authority (the “port”). After reviewing the submitted contracts, we note although the contracts impose an obligation on the partnership to provide some certain services in exchange for a certain amount of money, the agreements variously require the partnership to (1) increase investment in the city, (2) promote competition at the airport, (3) promote economic development in the county, (4) assist and promote local businesses, (5) positively influence attitudes among business decision makers and community leaders by promoting the county, (6) promote the port and the Greater Houston Metropolitan Area (“GHMA”) as the most attractive point of global trade and coordinate efforts of each entity in economic development, business development and trade promotion activities to the mutual revenue benefit of the port and GHMA, (7) promote current and emerging industries in the Houston region, and (8) foster business retention and expansion in the Houston region. *See* City Agreement, ¶ III.B; Airport Agreement, Exh. A; County Agreement, Art. I, sec. 1.01(a) and Art. II, sec. 2.01(a)-(b); Port Agreement, File No. 2010-0329, p. 2; Port Agreement, File No. 2010-0331, p.2; Port Agreement, File No. 2010-0330, ¶ 1.a-b. As in Open Records Decision No. 228, where we construed a similar contractual provision, we believe these provisions place the city, the airport, the county, and the port in the position of “supporting” the operation of the partnership with public funds within the meaning of section 552.003 of the Government Code. *See* ORD 228.

Based upon our review of the submitted contracts, we conclude the partnership shares common purposes and objectives with the city, the airport, the county, and the port, such that an agency-type relationship is created. *See* Open Records Decision No. 621 at 9 (1993); *see also* Local Gov't Code § 380.001(a), (b) (providing that governing body of municipality may establish and provide for administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality). Further, we find many of the specific services the partnership provides pursuant to the contracts comprise traditional governmental functions. *See* ORD 621 at 7 n.10. Accordingly, we conclude the partnership falls within the definition of a "governmental body" under section 552.003(1)(A)(xii) of the Government Code with respect to the services it performs under the contracts at issue. As you state you raise no exceptions to disclosure of the responsive information, the partnership must release any such information at this time.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 447240

c: Requestor

50 DEC 17 2015
At 2:30 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-12-000683

GREATER HOUSTON PARTNERSHIP, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT
	§	
v.	§	419th JUDICIAL DISTRICT
	§	
GREG ABBOTT, TEXAS ATTORNEY GENERAL, <i>Defendant.</i>	§	
	§	
	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Greater Houston Partnership (GHP) sought a determination that it is not a governmental body for purposes of requests made under the PIA. All matters in controversy between Plaintiff GHP and Defendant Ken Paxton, in his official capacity as Texas Attorney General (the Attorney General)¹ arising out of this lawsuit have been resolved, and the parties agree to the entry and filing of this Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow the requestor of information a reasonable period of time to intervene after notice of the intent to enter into settlement is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice to requestor Ms. Purva Patel on October 29, 2015, providing reasonable notice of this setting. The requestor was informed of the parties' agreement that GHP is not a governmental body for purposes of the PIA and need not release the requested information pursuant to a request made under the PIA. The requestor was

¹ Greg Abbott was named defendant in his official capacity as Texas Attorney General. Ken Paxton became Texas Attorney General on January 5, 2015, and is now the appropriate defendant in this cause.



also informed of her right to intervene in the suit to contest the agreement of the parties. The requestor has neither informed the parties of her intention to intervene, nor has a motion to intervene been filed.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties in this suit.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. GHP and the Attorney General have agreed that, pursuant to the Texas Supreme Court's decision in *Greater Houston Partnership v. Paxton*, No. 13-0745, 2015 WL 3978138 (Tex. June 26, 2015), GHP is not a governmental body for purposes of the PIA and it need not release the requested information to the requestor.
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims between GHP and the Attorney General in this cause, and is a final judgment.

SIGNED this 17th day of December, 2015.

Muelo D. Inacio
JUDGE PRESIDING

AGREED:

Bill Aleshire

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IN HIS OFFICIAL CAPACITY AS TEXAS
ATTORNEY GENERAL