



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2012

Ms. Ruth Reid  
Executive Director  
Nueces County Neighborhood Justice, Inc.  
d/b/a Dispute Resolution Services  
901 Leopard Street, Room 401.2  
Corpus Christi, Texas 78401

OR2012-09317

Dear Ms. Reid:

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# 456438.

Nueces County Neighborhood Justice, Inc. d/b/a Nueces County Dispute Resolution Services ("DRS") received two requests from the same requestor for twenty-eight categories of information related to DRS, its board members and officers, its policies and procedures, and its relationship with various governmental bodies and bar associations. You have provided some of the requested information to the requestor. You contend that DRS is not a "governmental body" subject to the Act. We have considered your submitted arguments. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you argue that the requested information is not subject to the Act because DRS is not a governmental body. 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). "Public funds" from a state or governmental subdivision of the state can be in various forms and can include

free office space, utilities and telephone use, equipment, and personnel assistance. *See* Att’y Gen. Op. No. MW-373 (1981).

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). 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 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). Thus, DRS 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 Association*, 850 F.2d 224 (5th Cir. 1988), the United States Court of Appeals for the Fifth Circuit recognized that 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 that 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 that 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 that 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 that 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 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 [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* 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 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* 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.*

You contend DRS is not a governmental body under section 552.003 of the Government Code because it is not supported in whole or in part by public funds. However, you state DRS receives court fees for each civil lawsuit filed in the District Courts and County Courts-at-Law. Additionally, you inform us DRS has contracts with Nueces, San Patricio, Bee, and Live Oak counties to administer and make effective their alternative dispute resolution systems in exchange for receiving fees. You state the Nueces County Auditor’s office maintains “all present and past [DRS] funds” in a trust account that is listed with other trust funds in the county’s custody. Although you argue that receiving funds in this manner constitutes a pass-through, and this method of receipt does not make the funds public, we disagree. Additionally, you inform us that Nueces County (the “county”) provides DRS with office facilities and utility services within the Nueces County courthouse at no cost. By providing DRS with the facilities and utilities, we further find the county is providing public funds for DRS’ operations within the meaning of section 552.003 of the Government Code. *See id.*; ORD 228; Attorney General Opinion MW-373 (1981). Accordingly, we determine DRS receives public funds in the form of fees and by the county’s provision of facilities and utilities.

We next determine whether DRS’ receipt of public funds makes the entity a governmental body for purposes of the Act. You inform us DRS was incorporated as a 501C(3) non-profit corporation to develop an alternative system to resolve disputes and supplement court alternatives to resolve conflicts. You further state judges have ordered cases to mediation at DRS, which “assists the courts and saves Nueces County money.” Based on your

representations and our review, we find the relationship between DRS and Nueces County evidences a common purpose and objective such that an agency-type relationship is created. *See* Open Records Decision No. 621 (1993). Therefore, we find DRS falls within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code. However, you also assert DRS is part of the judiciary. Therefore, we will address your arguments that DRS is not subject to the Act pursuant to the exclusion of the judiciary from the Act found in section 552.003(1)(B) of the Government Code.

Section 552.003(1)(B) of the Government Code expressly excludes the judiciary from the requirements of the Act. Gov’t Code § 552.003(1)(B). The Texas Supreme Court determined, in *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), the judiciary, for purposes of section 552.003 consists of courts in which the judicial power is vested pursuant to article V, section 1 of the Texas Constitution. 924 S.W.2d at 922. Article V, section 1 provides:

The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioner’s Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law. The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

Tex. Const. art. V, § 1. Accordingly, only the courts set forth in article V of the Texas Constitution, and such additional courts provided by law, are members of the judiciary, and thus excluded from the Act pursuant to section 552.003. We note DRS is not one of the entities enumerated in article V, section 1 as being part of the judiciary. Further, you state DRS was created under chapters 152 and 154 of the Civil Practice and Remedies Code. *See* Civ. Prac. & Rem. Code §§ 152.002 (commissioner’s court may establish alternative dispute resolution system for the peaceable and expeditious resolution of disputes), 154.021. Thus, the legislature did not establish DRS pursuant to article V, section 1 of the Texas Constitution.

You also argue DRS is an arm of the judiciary or is “attached” to the judiciary because it performs a judiciary function. You contend the judiciary’s purpose is to resolve disputes. You assert DRS added to the judiciary’s ability to do this peaceably and expeditiously, and state DRS was created as an informal forum to assist the judiciary. The Texas Supreme Court addressed the exercise of judicial power by administrative agencies in *State v. Flag-Redfern Oil Company*:

An administrative agency is not a “court” and its contested case proceedings are not lawsuits, no matter that agency adjudications are sometimes referred to loosely as being “judicial” in nature. Agency adjudications do not reflect

an exercise of the judicial power assigned to the “courts” of the State in Tex. Const. Ann. Art. V, § 1 (Supp. 1991); they are simply executive measures taken in the administration of statutory provisions.

*State v. Flag-Redfern Oil Co.*, 852 S.W.2d 480, 485 n.7 (Tex. 1993) (quoting *Beyer v. E.R.S.*, 808 S.W.2d 622, 627 (Tex. App.—Austin 1991), writ denied). As stated above, DRS was created under the Civil Practice and Remedies Code. Upon review of your arguments and the submitted information, we find you have not established DRS is acting as an arm of the judiciary for the purposes of the Act. Accordingly, none of the requested information constitutes judicial records as contemplated by section 552.003(1)(B) of the Government Code.

Next, we must address the procedural obligations of DRS under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records 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 governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov’t Code § 552.301(e)(1)(A)-(D). In this instance, you state DRS received the request for information on March 28, 2012. However, as of the date of this letter, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find DRS has failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See 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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You have raised no exceptions to disclosure. Thus, we have no choice but to order the information at issue released pursuant to section 552.302.

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 black ink, appearing to read 'BAB' followed by a long horizontal flourish.

Benjamin A. Bellomy  
Assistant Attorney General  
Open Records Division

BAB/dls

Ref: ID# 456438

No enclosures

c: Requestor