



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2013

Mr. Trent B. Krienke  
Counsel for the Gainesville Hospital District  
Davis & Wright, P.C.  
P.O. Box 2283  
Austin, Texas 78768-2283

OR2013-02292

Dear Mr. Krienke:

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# 478252.

The Gainesville Hospital District d/b/a North Texas Medical Center ("NTMC") and the North Texas Medical Center Foundation (the "foundation"), which you represent, received a request for information related to individual financial receipts and expenses received or paid by NTMC and/or the foundation in connection with a specified public event. You state responsive records of receipts and expenses involving NTMC either have been or will be released. You contend the foundation is not a governmental body subject to the Act and need not release any information. We have considered your arguments.

As defined by section 552.003 of the Government Code, the term "governmental body" means "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). Both the courts and this office have addressed the scope of the definition of "governmental body" under the Act and its statutory predecessor. In *Kneeland v. Nat'l Collegiate Athletic Ass'n*, 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." *Id.* at 228 (quoting Open Records Decision

No. 1 (1973)). Rather, the *Kneeland* court noted that in interpreting the predecessor to section 552.003(1)(A) 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."

*Id.* 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 entities provided specific, measurable services in return for the funds. *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 the 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 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 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 [c]ommission 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 (the "city") to care for and preserve an art collection owned by the city and 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 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 cannot be known, specific, or measurable." *Id.* at 5. Thus, we concluded the city 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 related to programs supported by public funds were subject to the Act. *Id.*

In Attorney General Opinion MW-373 (1981), this office examined the University of Texas Law School Foundation (the "UT Law Foundation"), a nonprofit corporation that solicited donations and expended funds to benefit the University of Texas Law School (the "university"). Pursuant to a memorandum of understanding, the university provided the UT Law Foundation space in the law school building to carry out its obligations, utilities and telephone services and reasonable use of university equipment and personnel to coordinate the activities of the UT Law foundation with the educational operations of the university. This office found such services amounted to support for purposes of the Act and concluded "[s]ince the [UT Law] foundation receives support from the university that is financed by public funds, its records relating to the activities supported by public funds will be subject to public scrutiny." Attorney General Opinion MW-373 at 11 (citing ORD 228). The opinion noted the purpose of the UT Law Foundation was to raise funds and provide

resources for the benefit of the university and considered the provision of office space and other assistance enhanced the cost effectiveness of operating the UT Law Foundation. Further, the opinion noted the university retained control over the relationship of the UT Law Foundation and the university through the authority of the university board of regents to control the use of university property. *Id.* Thus, because the UT Law Foundation received general support from the university, and the university is financed by public funds, the UT Law Foundation was found to be a governmental body for purposes of the statutory predecessor of the Act.

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 indicates a common purpose or objective or 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 involving 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.*

You inform us the foundation is not supported in whole or in part by public funds. You explain the foundation is a private, non-profit corporation that solicits donations and expends funds to support NTMC. You have provided copies of the foundation's articles of incorporation and current bylaws. You also inform us NTMC is not a member of the foundation and does not appoint members to the foundation's board of directors, although one member of NTMC's board of directors also serves on the foundation's board. You state the foundation does not receive any funds directly from NTMC and has no written agreements with NTMC. You also state NTMC "does not retain control over the relationship [between] the [f]oundation and NTMC." You also inform us, however, that NTMC shares one employee with the foundation and provides space for the foundation's board meetings.

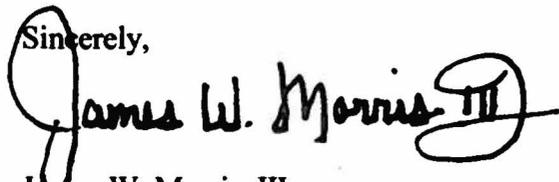
After consideration of your arguments and review of the documentation you provided, we are unable to determine that the foundation receives public funding or services to the extent necessary to make it a governmental body under the Act. *See* Gov't Code § 552.003(1)(A)(xii); Attorney General Opinion MW-373; *see also* ORD 228; *cf. Blankenship*, 975 S.W.2d at 362; Open Records Decision Nos. 602, 569 (1990) (Fiesta San Antonio Commission that was designated by city ordinance as fiesta planning agency but received no public funds held not governmental body), 317 (1982) (mayor's task force that examined city governmental structure but did not spend and was not supported by public

funds held not governmental body). Consequently, we conclude the foundation is not a governmental body subject to the Act. Therefore, the foundation need not respond to the present request for its 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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looped initial "J" and a stylized "III" at the end.

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

JWM/bhf

Ref: ID# 478252

c: Requestor