



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 1, 2016

Mr. C. Robert Heath  
Counsel for Central Texas Regional Water Supply Corporation  
Bickerstaff Heath Delgado Acosta LLP  
3711 South MoPac Expressway, Building One, Suite 300  
Austin, Texas 78746

OR2016-04911

Dear Mr. Heath:

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# 600122.

The Central Texas Regional Water Supply Corporation (the "corporation"), which you represent, received three requests for information pertaining to the corporation and a specified project.<sup>1</sup> You claim the corporation is not a governmental body subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.105, 552.111, and 552.113 of the Government Code. Additionally, you state, and the submitted documentation shows, you notified third parties of the requests for information and of their right to submit arguments stating why their information should not be released.<sup>2</sup> *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments

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<sup>1</sup>You state the corporation sought and received clarification of the second request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>The third parties you state the corporation notified pursuant to section 552.305 of the Government Code are the following: Ardaga & Associates; San Antonio Water System; Abengoa Water USA, LLC; VRRSP Consultants, LLC ("VRRSP"); Agengoa Vista Ridge, LLC; and RW Harden & Associates.

from legal counsel for VRRSP. We have considered the submitted arguments and reviewed the submitted information.<sup>3</sup>

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* Gov't Code §§ 552.002(a), .006, .021. Under the Act, the term "governmental body" includes several enumerated kinds of entities, including "the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code[.]" *Id.* § 552.003(1)(A)(ix).

You state, and provide documentation demonstrating, the corporation was organized under chapter 67 of the Water Code. You provided our office with the corporation's Restated Certificate of Formation (the "certificate"). Article Two of the certificate states "[t]he [c]orporation is a non-profit corporation organized and operating under chapters 67 and 49 of the Texas Water Code[.]" In addition, Article Eleven provides "the [c]orporation will pay annually to political subdivisions, private corporations, or other persons that have transacted business with the [c]orporation during the previous year any profits in direct proportion to the amount of business the [c]orporation transacts with such person or during the year[.]" *See* Water Code § 67.008(a)-(b). Thus, we understand the corporation was organized under the authority of chapter 67 of the Water Code. However, you state the corporation does not provide a water supply or wastewater service at this time. You explain the corporation was formed to "acquire, construct, build[,], and operate a water transmission pipeline[.]" but the project is currently in the planning and development stage and construction has not started. Further, you state the corporation is not currently exempt from ad valorem taxation under section 11.30 of the Tax Code. You explain the corporation has not yet acquired any property for which to apply for an exemption under section 11.30. *See* Tax Code §§ 11.30, .43. We, therefore, conclude the corporation is not a governmental body under the Act at this time pursuant to section 552.003(1)(A)(ix) of the Government Code. *See* Gov't Code § 552.003(1)(A)(ix).

You also assert the corporation is not a governmental body pursuant to section 552.003(1)(A)(xii) of the Government Code, and, therefore, it is not subject to the Act. Section 552.003(1)(A)(xii) defines "governmental body" 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[.]

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<sup>3</sup> We note we asked the corporation to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the correspondence sent by the corporation pursuant to that request.

*Id.* § 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 Texas Supreme Court has defined “supported in whole or part by public funds” to include only those private entities or their sub-parts sustained, at least in part, by public funds, meaning they could not perform the same or similar services without the public funds.” *Greater Houston P’ship v. Paxton*, 468 S.W.3d 51, 63 (Tex. 2015). Thus, section 552.003(1)(A)(xii) encompasses only those private entities that are dependent on public funds to operate as a going concern, *see id.* at 61, and only those entities acting as the functional equivalent of the government, *see id.* at 62.

You explain “after the construction of [the corporation’s] water transmission infrastructure is complete, [the corporation] anticipates that it will provide water transmission services to a private entity . . . which will sell that water to the San Antonio Water System[ (“SAWS”)].” You state the corporation does not anticipate it “will provide any services directly to or receive any payments from SAWS.” Further, you inform us the corporation receives 100% of its funds from private sources. Based upon your representations and our review, we find the corporation is not sustained by public funds for purposes of the Act. *See id.* at 63. Consequently, the corporation does not fall within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code and is not subject to the Act. Accordingly, the corporation need not respond to the requests for information.<sup>4</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

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<sup>4</sup>As we are able to make this determination, we do not address the remaining arguments.

Ref: ID# 600122

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Mr. Arthur D. Galvan  
Ardaga & Associates  
14407 Dark Star  
San Antonio, Texas 78248-1115  
(w/o enclosures)

Ms. Nancy Belinsky  
Vice President and General Counsel  
San Antonio Water System  
2800 U.S. Highway 281 North, Tower I, 6<sup>th</sup> Floor  
San Antonio, Texas 78212  
(w/o enclosures)

Ms. Araceli Gomez  
Abengoa Water USA  
2600 Via Fortuna, Suite 220  
Austin, Texas 78746  
(w/o enclosures)

VRRSP Consultants  
c/o Mr. Chuck Shipman  
The Morales Firm  
115 East Travis, Suite 1530  
San Antonio, Texas 78205  
(w/o enclosures)

Mr. Pedro Almagro Gavilan  
Abengoa Vista Ridge  
1600 Via Fortuna, Suite 220  
Austin, Texas 78746  
(w/o enclosures)

Mr. James Bene  
RW Harden & Associates  
3409 Executive Center Drive, Suite 226  
Austin, Texas 78731  
(w/o enclosures)