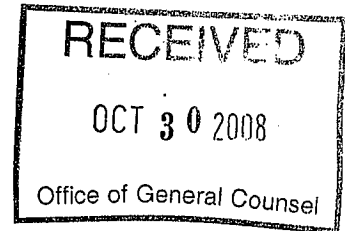




ATTORNEY GENERAL OF TEXAS
GREG ABBOTT



October 27, 2008

Ms. Elizabeth Slate Horn
General Counsel
Dallas Housing Authority
3939 North Hampton Road
Dallas, Texas 75212

OR2008-14589

Dear Ms. Horn:

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# 325913.

The Dallas Housing Authority (the "authority") received a request for information pertaining to the severance package received by a named individual. You claim that the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted information.

The Act requires "governmental bodies" to make public, with certain exceptions, information in their possession. 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." Gov't Code § 552.003(1)(A)(xii). Courts, as well as this office, have previously considered the scope of the Act's definition of "governmental body." For example, in *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), an appellate 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 that the attorney general's opinions generally examine the facts of the relationship between the private entity and the governmental body.

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.'" *Id.* at 3. 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.*

As stated above, 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 that 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 the 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. ORD 509 at 2. The decision noted that 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. Furthermore, 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)). However, 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, only the records relating to that part supported by public funds are subject to the Act, and records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992) (only records of those portions of Dallas Museum of Art directly supported by public funds are subject to Act).

In this instance, you contend that the submitted severance information is not subject to the Act. You indicate that severance payments 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 state that the COCC provides the authority with administrative, financial and personnel services, and funds these services through management fees and "fee-for-service" fees collected from federally subsidized properties. 71 Fed. Reg. 52,710 (2006). You also assert that the severance payments at issue were made to the individual at issue solely from the COCC's fee income. Because the severance payments at issue were funded by COCC fee income, and not state or local funding, we conclude that information

relating to these severance payments does not consist of public information for purposes of the Act. *See* Gov't Code § 552.003(1)(A)(xii). Thus, the information at issue is not subject to the Act, and the authority is not required to release it pursuant to Act.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

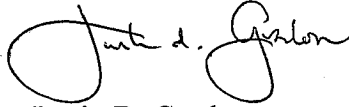
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Justin D. Gordon". The signature is written in a cursive style with a large initial "J" and "G".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 325913

Enc. Submitted documents

c: Ms. Kim Horner
Staff Writer
Dallas Morning News
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(w/o enclosures)