



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2015

Ms. Regina Morales
President/CEO
Central Fort Bend Chamber
4120 Avenue H
Rosenberg, Texas 77471

OR2015-05495

Dear Ms. Morales:

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# 557536.

The Central Fort Bend Chamber (the "chamber") received a request for a copy of the chamber's January 2014 through October 2014 check register. You assert the chamber is not a governmental body subject to the Act. In the alternative, you claim portions of the submitted information are exempted from disclosure under section 552.101 of the Government Code. We have considered your claims and reviewed the submitted information.

We address your argument the chamber is not a governmental body for purposes of the Act. Under the Act, the public generally has a right of access to information in the possession of a governmental body. *See* Gov't Code §§ 552.002, .021. A "governmental body" is defined, in relevant 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[.]" *Id.* § 552.003(1)(A)(xii). The term "public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5).

This office has long held private persons or businesses are not "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 v. Nat'l Collegiate Athletic*

Ass'n, 850 F.2d 224, 228 (5th Cir. 1988) (quoting Open Records Decision No. 1 (1973), *cert. denied*, 488 U.S. 1042 (1989)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted attorney general'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.(omissions in original). As the *Kneeland* court noted, when considering the breadth of the Act's definition of "governmental body," this office has distinguished between private entities receiving public funds in return for specific, measurable services, and entities receiving public funds as general support.

For example, Open Records Decision No. 228 (1979) 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, constituted a "governmental body" under the Act. The contract existing between the commission and the City of Fort Worth obligated Fort Worth to pay the commission \$80,000 per year for three years. Open Records Decision No. 228 at 1 (1979). The contract obligated the commission to, among other things, "[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 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 of section 552.003.]" *Id.* Accordingly, this office found the commission to be a governmental body for purposes of the Act. *Id.*

On the other hand, the *Kneeland* court noted that two entities, the National Collegiate Athletic Association (the "NCAA") and the Southwest Conference (the "SWC"), which received public funds, were not "governmental bodies" for purposes of the Act because both

provided specific, measurable services in return for those funds. *Kneeland*, 850 F.2d at 231. 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 its member universities. *Id.* at 226-28. In return for these funds, the NCAA and the SWC provided specific services to its 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 court concluded that, while the NCAA and the SWC clearly received public funds from a portion of its members, neither entity was a “governmental body” for purposes of the Act because these entities 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 it received from its public university members. *See id.* at 231.

Here, you explain the chamber is a nonprofit corporation with 665 members, of which six are governmental entities. You state the chamber is managed by a 24-member Board of Directors, none of which is associated with a governmental body. The chamber’s mission statement reads, “[t]he . . . [c]hamber promotes economic growth, constructive change[,] and superior Quality of Life through the development and implementation of goals and programs that advocate the objectives of the local business community.” You inform us, to achieve its mission, the chamber offers various membership levels, with membership services increasing as membership fees increase. You have submitted for our review a copy of a membership agreement form as well as information that describes the services the chamber provides at each of the six chamber membership levels: President’s Circle, Chairman’s Circle, Community Partner, Gold Investor, Silver Investor, and Business Investor.

The President’s Circle member, for example, pays an annual fee of \$1,000 to receive, among other things, three annual e-blasts to all chamber members, invitations to attend chamber board meetings as a non-participating guest, free attendance at various chamber membership events, website listing with landing page for ten business locations, and the opportunity to list ten business locations on the chamber’s website. On the other hand, a Business Investor pays an annual fee of \$275 to receive, among other things, a single listing on the chamber website, no e-blasts, reduced, rather than free, pricing on member events, website listing and landing page for one business location, marketing materials displayed in the chamber lobby, directory listing for one business location, business referrals, and no board meeting attendance opportunity. You also inform us a member at any level may choose to add an additional service from a menu of specific services. For example, you state, for a specified charge in addition to the membership fee, a member may add an e-blast for a special promotion.

Based on our review of the submitted membership agreement form, the supporting documentation, and your arguments, we conclude the chamber receives public funds in the form of membership fees from public entities. *See Kneeland*, 850 F.2d at 226-28. However, we find the chamber provides to its members specific, measurable services in return for the

public funds it receives. *See id.* at 231. Therefore, the chamber does not receive public funds for its general support. *Id.* Consequently, we find the chamber is not a “governmental body” for purposes of the Act, and the chamber is not required to release the requested information to the requestor under the Act.¹ *See id.*

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, 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 557536

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ In light of this conclusion, we need not address your claim under Government Code section 552.101.