



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 28, 2015

Mr. James A. Hemphill
Attorney for the Austin Film Society
Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701

OR2015-27066

Dear Mr. Hemphill:

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# 592120.

The Austin Film Society (the "society"), which you represent, received a request for specified categories of information pertaining to the society's contract to run the City of Austin's (the "city") public access television channel. You state you have released some information to the requestor. You claim the society is not a governmental body, and thus, the requested information is not subject to the Act. Alternatively, you claim the requested information is excepted from disclosure under sections 552.111, 552.117, 552.136, and 552.137 of the Government Code. We have considered your arguments. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You assert the society is not a governmental body, and therefore it is not subject to the Act. The Act defines "governmental body," in pertinent 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). “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 state the society is a non-profit section 501(c)(3) corporation. You explain Austin Public Access (“APA”) is operated as a subdivision of the society’s Community Media department. You also state APA provides specific measurable services to the city but “does not receive public funding for general, sustaining support of the public access system.” You explain the city reimburses the society for the expenses incurred in providing those services, and the society is required to segregate the financial operations of the APA from the rest of the society. We note the requestor asserts the society would not be able to exist without public funds. However, you state, and provide an affidavit from the society’s executive director asserting, the society would, through APA or its successor, “continue to provide public access-oriented services to the public,” including training and equipment rentals, if the contract at issue was discontinued. Whether the society or APA would be able to exist without public funds is a question of fact this office is unable to resolve in the opinion process. In such a situation, we must rely upon the facts alleged to us by the governmental body requesting our opinion or upon those facts that are discernible from the documents submitted for our inspection. Based on your representations that the society and APA would continue to exist without the public funds provided by the contract with the city, we find the society is not sustained by public funds. *See id.* at 63. Therefore, the society 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 society need not respond to the present request for information.¹

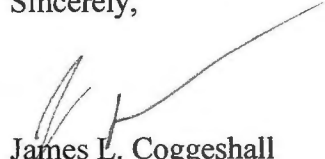
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹As we are able to make this determination, we need not address your arguments against disclosure.

[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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/dls

Ref: ID# 592120

Enc. Submitted documents

c: Requestor
(w/o enclosures)