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ATTORNEY GENERAL OF TEXAS

April 22, 2016

Mr. Cris Feldman
For Northwest Catering Services, Inc.
Feldman & Feldman, P.C.
3355 West Alabama Street, Suite 1220
Houston, Texas 77098

OR2016-09010

Dear Mr. Feldman:

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# 606574.

The Northwest Catering Services, Inc. ("NWC"), which you represent, received a request for information pertaining to contracts, agreements, payments, and communications between NWC and Cosmos Foundation, Inc.; Harmony Public Schools; and Riverwalk Educational Foundation. You claim NWC is not a governmental body subject to the Act. Alternatively, you claim the requested information is excepted from disclosure under sections 552.102, 552.104, and 552.110 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert NWC 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[.]

Gov't Code § 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

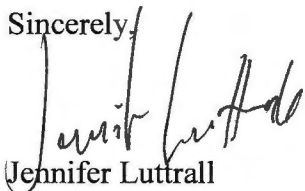
the same or similar services without the public funds.” *Greater Houston P’ship v. Paxton*, 468 S.W.3d 51, 63 (Tex. 2015). Thus, section 552.003(1)(A)(xii) encompasses only those private entities that are dependent on public funds to operate as a going concern, *see id.* at 61, and only those entities acting as the functional equivalent of the government, *see id.* at 62.

You state NWC is a private for-profit corporation that provides specified and definite services pursuant to *quid pro quo* contracts. You explain some of NWC’s clients are charter schools for which NWC provides breakfast and lunches pursuant to contracts. You state NWC is not supported by public funds, is not performing a traditional governmental role, and is not acting as a quasi-governmental entity. Based upon your representations and our review, we find NWC is not sustained by public funds for purposes of the Act. *See id.* at 63. Consequently, NWC 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, NWC need not respond to the 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/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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 606574

c: Requestor

¹As we are able to make this determination, we do not address your remaining arguments.