



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 11, 2017

Mr. Bradley B. Young  
Counsel for the Central Texas Regional Water Supply Corporation  
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Austin, Texas 78746

OR2017-15351

Dear Mr. Young:

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# 665158.

The Central Texas Regional Water Supply Corporation (the "corporation"), which you represent, received a request for several categories of information pertaining to a specified property. You claim the corporation is not a governmental body subject to the Act. We have considered your argument and reviewed the submitted representative sample of information.<sup>1</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).

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

You state the corporation was organized under chapter 67 of the Water Code. You previously 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. 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. You state while the corporation has acquired some easement property and received a tax exemption in two counties, it does not currently provide a water supply or wastewater service. 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[.]

*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")]."

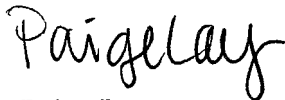
You state the corporation does not anticipate it "will provide any services directly to or receive any payments from SAWS." Further, you inform us the corporation receives 100% of its funds from private sources. Based upon your representations and our review, we find the corporation is not sustained 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 request for information.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 665158

Enc. Submitted documents

c: Requestor  
(w/o enclosures)