



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2019

Mr. George V. Basham, III
Counsel for the Anderson Mill West Neighborhood Assoc.
The Weichert Law Firm
3821 Juniper Trace, Suite 106
Austin, Texas 78738

OR2019-11156

Dear Mr. Basham:

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# 762284.

The Anderson Mill West Neighborhood Association (the "association"), which you represent, received a request for a copy of the association's non-profit exemption application, letters from the Internal Revenue Service regarding the application, annual returns for two specified years, and a report of contributions and expenditures for the same two years. You state the association does not have information responsive to a portion of the request.¹ You claim the association is not a governmental body, and thus, is not subject to the Act. We have reviewed your argument and the submitted information.

The association asserts it is not a governmental body pursuant to section 552.003(1)(A)(xii) of the Government Code, and, therefore, 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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.

The association informs us it is a private, tax-exempt nonprofit corporation. The association states it receives a portion of its funding from the West Travis County Municipal Utilities District (the “district”) for “beautification funds.” However, the association explains it also receives membership fees and other contributions from individuals and entities. Additionally, the association states it has “the independent ability to set its membership fees at a level necessary to support whatever actions it decides to undertake and could do so in the absence of some or all of the [funds it] received from the [district].” Based upon these representations, we determine the association is not dependent on governmental funding as a going concern and is not sustained by public funds for purposes of the Act. Consequently, the association 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 association 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, 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/gw

Ref: ID# 762284

Enc. Submitted documents

c: Requestor
(w/o enclosures)