



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2019

Ms. Pamela Smits
Board President
Arts Council of Brazos Valley
4180 Highway 6 South
College Station, Texas 77845

Mr. Gaines West
Counsel for the Arts Council of Brazos Valley
West, Webb, Allbritton & Gentry, P.C.
1515 Emerald Plaza
College Station, Texas 77845-1515

OR2019-12515

Dear Ms. Smits and Mr. West:

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# 762880.

The Arts Council of Brazos Valley (the "council"), which you represent, received a request for minutes, approved financials, and documents bearing the requestor's signature from specified board meetings and a copy of a specified construction loan. You claim the council is not a governmental body, and thus, is not subject to the Act.¹ Alternatively, you claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert the council is not a governmental body subject to the Act. The Act defines "governmental body," in pertinent part, as the part, section, or portion of an organization,

¹We note we asked the council to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the correspondence sent by the council pursuant to that request.

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 the council is a non-profit organization founded for the purpose of establishing a leadership role in organizing local arts advocacy efforts. While you acknowledge the council receives some public funding, you state the council "does not act as the functional equivalent of the government." For example, you explain the council "is not elected by the public at large, does not raise revenue via taxation, and does not have the ability to enforce rules or policies." Based on our review of the council's representations, we find the council 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 council need not respond to the present request for information.²

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/sb

²As we are able to make this determination, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 762880

Enc. Submitted documents

c: Requestor
(w/o enclosures)