



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 13, 2019

Mr. Michael W. O'Donnell
Counsel for the Texas Research and Technology Foundation
Norton Rose Fulbright US LLP
111 West Houston Street, Suite 1800
San Antonio, Texas 78205

OR2019-32014

Dear Mr. O'Donnell:

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# 796855.

The Texas Research and Technology Foundation (the "foundation"), which you represent, received two requests from the same requestor for: (1) six categories of information relating to (a) the employment and associations of a named individual with the foundation, VelocityTX LLC ("Velocity"), and a named individual, and (b) agreements or funding made by the City of San Antonio to the foundation, Velocity, and the named individual; and (2) eight categories of information pertaining to a specified analysis involving the foundation and Velocity. You claim the foundation is not a governmental body, and thus, is not subject to the Act. In the alternative, you claim the requested information is excepted from disclosure under sections 552.103, 552.104, and 552.110 of the Government Code. We have considered the submitted arguments. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

You assert the foundation 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, 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 in 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 foundation is a non-profit corporation that “does not rely upon funding from the State of Texas or a governmental subdivision of the State of Texas in carrying out [the foundation’s programs] or its other operations.” You explain the foundation receives “donations from private foundations and companies to support its operations[.]” Additionally, you state the foundation “does not receive funds, and is not eligible to receive funds, under the federal community services block grant program.” Based upon your representations and our review, we find the foundation is not sustained by public funds for purposes of the Act. *See id.* at 63. Therefore, we conclude the foundation does not fall within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code and is thus not subject to the Act. Accordingly, the foundation 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/rm

Ref: ID# 796855

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As we are able to make this determination, we need not address the remaining arguments.