



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2020

Mr. Tony Schaffer
Counsel for Southwestern Correctional, LLC
Schaffer Law Firm
14360 Falcon Head Boulevard, Suite 100
Austin, Texas 78738

OR2020-10808A

Dear Schaffer:

This office issued Open Records Letter No. 2020-10808 on April 13, 2020. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 13, 2020. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Your request was assigned ID# 818907.

Southwestern Correctional, LLC, ("Southwestern"), which you represent, received a request for disciplinary records related to all employees of the Johnson County Correctional Center (the "center") who have been fired, resigned under investigation, or suspended since January 1, 2019.¹ You claim Southwestern is not a governmental body subject to the Act. In the alternative, you claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.107(1), 552.117, 552.1175, and 552.147 of the Government Code. We have considered your arguments.²

You assert Southwestern is not a governmental body pursuant to section 552.003(1)(A)(xv) of the Government Code, and, therefore, is not subject to the Act. Section 552.003(1)(A)(xv) defines "governmental body," in pertinent part, as follows:

¹ As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office.

² We note we asked you 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 information you submitted pursuant to that request.

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)(xv). “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)(xv) 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 inform us Southwestern is a private for-profit company that operates the center under contracts with Johnson County. You state Southwestern “was not, and is not, dependent upon funds from Johnson County to continue as a going concern.” Further, you represent the “overwhelming majority of revenues of Southwestern are derived from contracts with agencies of the federal government and [Southwestern] is not therefore sustained by public funds[.]” Based upon your representations and our review, we find Southwestern is not sustained by public funds for purposes of the Act. *See id.* at 63. Consequently, Southwestern does not fall within the definition of a “governmental body” under section 552.003(1)(A)(xv) and is not subject to the Act. Accordingly, Southwestern 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 <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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

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c: Requestor