



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 5, 2020

Ms, Amy E. Beckstead
Counsel for Caritas of Austin
Beckstead Terry PLLC
9442 North Capital of Texas Highway
Arboretum Plaza One, Suite 500
Austin, Texas 78759

OR2020-15525

Dear Ms. Beckstead:

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# 830164.

Caritas of Austin ("Caritas"), which you represent, received a request for the applications submitted for the Grant Application Coordinator position. You assert Caritas 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 and 552.102 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

You assert Caritas 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:

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[.]

¹ We note we asked Caritas 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 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 Caritas pursuant to that request.

Gov't Code § 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 Caritas is a private non-profit section 501(c)(3) corporation that provides services to prevent and end homelessness in the greater Austin Area. You assert that even though payments through contracts with the City of Austin (the "city") and the federal government comprise the majority of Caritas's funding, Caritas would be able to operate as a going concern without these payments. Further, you assert the payments received from the city and the federal government are pursuant to quid pro quo contracts under which Caritas provides specific services. You also represent Caritas is not acting as a functional equivalent of the government. Based upon your representations and our review, we find Caritas is not sustained by public funds for purposes of the Act. *See id.* at 63. Consequently, Caritas does not fall within the definition of a "governmental body" under section 552.003(1)(A)(xv) of the Government Code. Accordingly, Caritas need not respond to the 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 <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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

² As we are able to make this determination, we need not address your arguments against disclosure.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)