



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2020

Mr. Zachariah T. Evans
Counsel for Sage Management Services
McGinnis Lochridge, LLP
600 Congress Avenue, Suite 2100
Austin, Texas 78701

OR2020-17647

Dear Mr. Evans:

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# 837993.

Sage Management Services ("Sage"), which you represent, received three requests for specified communications received or sent by Sage, deed violation letters sent by Sage, and specified reports pertaining to a specified contract during a defined period of time. You assert Sage is not a governmental body subject to the Act. Additionally, you state, and provide documentation showing, you notified Williamson-Travis Counties Municipal Utility District No. 1 (the "district") of the request for information and of its right to submit arguments to this office. *See* Gov't Code § 552.304 (interested party may submit comment stating why information should or should not be released). We have received comments from the district. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹ We have also received and considered comments submitted by the requestor. *See id.*

You and the district assert Sage 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 We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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[.]

See 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 and the district inform us Sage is a privately-owned entity that provides deed restriction monitoring and enforcement services to municipal utility districts and property owner associations. You assert that even though Sage does contract with the district, the payments received as a result of the contract are not Sage’s sole source of funding. You inform us Sage also receives payments from private property owner associations, and thus, Sage would be able to operate as a going concern without payments from the district. Further, you and the district assert the payments received from the district are pursuant to a quid pro quo contract under which Sage provides specific services. Consequently, Sage does not fall within the definition of a “governmental body” under section 552.003(1)(A)(xv) of the Government Code. Accordingly, Sage need not respond to the requests 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/rm

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue.

Ref: ID# 837993

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Interested Party
(w/o enclosures)