



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2020

Mr. Trent B. Krienke
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Reed, Claymon, Meeker & Hargett, P.L.L.C.
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Austin, Texas 78731-4999

OR2020-20584

Dear Mr. Krienke:

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# 839226 (Ref. No. 1992.0023).

The Val Verde Hospital Corporation d/b/a Val Verde Regional Medical Center (the "center"), which you represent, received a request for specified communications, information pertaining to the requestor, and the agendas and minutes from board meetings during a stated time period. You claim the center is not a governmental body subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5.¹ We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹ We note we asked the center 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 the center pursuant to that request. Further, although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

² 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 those records contain substantially different types of information than that submitted to this office.

You assert the center 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[.]

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 the center is a private non-profit corporation that operates a non-profit hospital system. You state that the center receives limited public funds and the center “is not dependent on the public funds to operate as a going concern.” Based upon your representations and our review, we find the center is not sustained by public funds for purposes of the Act. *See id.* at 63. Consequently, the center does not fall within the definition of a “governmental body” under section 552.003(1)(A)(xv) of the Government Code. Accordingly, the center need not respond to the request for information.³

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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/be

³ As we are able to make this determination, we need not address your arguments against disclosure.

Ref: ID# 839226

c: Requestor