



April 26, 2021

County Attorney Jo Anne Bernal  
El Paso County Attorney's Office  
500 E. San Antonio  
5th Floor, Suite 503  
El Paso, TX 79901

**Via USPS Certified Mail**

Re: Request to Seek Texas Attorney General Opinion for Public Information Act Request Directed to El Paso Children's Hospital [*our tracking no: 2021-04-001*]

To whom it may concern:

I am writing to you pursuant to the *Texas Public Information Act* asking that you request an opinion from the Texas Attorney General regarding whether the El Paso Children's Hospital is a "governmental body" under the *Texas Public Information Act*.

My understanding is that your office is one of several authorized to request an Attorney General Opinion. I believe that it is appropriate for your office to seek an opinion because the University Medical Center of El Paso (UMC), a county taxing entity, is the "sole member" of the El Paso Children's Hospital Corporation organized under the laws of the State of Texas.

Additionally, in audit financial statements, UMC refers to the El Paso Children's Hospital as a "blended entity".

I hereby formally request that your office seeks a Texas Attorney General Opinion requesting that their office determines whether the El Paso Children's Hospital Corporation is a "governmental body" subject to the *Texas Public Information Act*.

**BACKGROUND**

On April 19, 2021, *El Paso News, Inc.* submitted a request to the El Paso Children's Hospital requesting "any correspondence between Estela Casas, Executive Director of El Paso Children's Hospital Foundation and Cindy Stout, CEO of El Paso Children's Hospital between March 28, 2021 and April 1, 2021." We submitted our request under the *Texas Public Information Act* via electronic mail. [*see Exhibit 1*]

On April 22, 2021, *El Paso News, Inc.* received a response from El Paso Children's Hospital via electronic mail advising us that the "El Paso Children's Hospital is not a governmental body." The EPCH response added, "as such, the Act does not apply to El Paso Children's Hospital." [*see Exhibit 2*]

*El Paso News, Inc.* disagrees with El Paso Children’s Hospital and we believe that the corporation is subject to the *Texas Public Information Act* as a “governmental body.”

The El Paso Children’s Hospital Corporation is a nonprofit, 501(c)(3), corporation organized under the State of Texas.

The “sole member” of the corporation is the El Paso County Hospital District d/b/a/ University Medical Center of El Paso, according to the Amended Bylaws of El Paso Children’s Hospital Corporation, amended on January 8, 2016. [see *Exhibit 3*] The El Paso Hospital District is a “governmental body” subject to the *Texas Public Information Act*.

The *Texas Public Information Act*, § 552.003(1)(A)(xv) defines a “governmental body” 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”. [emphasis ours]

Under Texas Attorney General Opinion GA-0603 (2008), the Texas Attorney General defined that “private entities fall within this definition of ‘governmental body’ if two requirements are met.”

1. “The first requirement is whether the funds at issue are public.”
2. “If the funds at issue are public, the second requirement is whether the private entity is ‘supported’ by or spends those public funds.”

It is our belief that the El Paso Children’s Hospital receives public funds in the form of Medicaid payments for the services it provides.

In GA-0280 (2004), the Texas Attorney General concluded that the *Border Health Institute*, a Texas nonprofit, is “an organization...that spends or that is supported by public funds,” like the El Paso Children’s Hospital.

Additionally, in ORD-601 (1992), the Texas Attorney General concluded that the *El Paso Housing Finance Corporation*, a Texas nonprofit, is subject to the TPIA because “all property owned by it, the income from the property, all bonds issued by it, the income from the bonds, and the transfer of the bonds” are exempt from taxes as “public property used for public purposes”.

The building occupied and from which the El Paso Children’s Hospital provides services was funded by a **2007 Bond election**. The bond measure read in part, “proceeds from the sale of the Bonds will be for the following purposes, to wit: (i) to acquire, construct and/or equip a children’s hospital as part of said District’s hospital system.”

The Texas Attorney General states that “if the public funds are used for general support, the entity falls within the definition of ‘governmental body’ under section 552.003(1)(A)(xii) of the Government Code.” [see *Texas Attorney General Opinion GA-0666 (2008)*]

## Texas Supreme Court Ruling

In addition to the Texas Attorney General opinions above, the Texas Supreme Court weighed in on the issue of a nonprofit being subject to the *Texas Public Information Act* in *Greater Houston Partnership v. Ken Paxton and Jim Jenkins*, No. 13-0745, argued on March 25, 2015.

In a divided decision, the Texas Supreme Court ruled that Greater Houston Partnership is not a governmental body because it “does not rely on its government contracts to sustain itself as a going concern.” The justices found that the chamber of commerce’ government funds “constitute a relatively miniscule portion” of its annual budget. Thus, according to the justices, the only way a private entity “can qualify as a ‘governmental body,’ then, is if it can be said to be ‘supported in whole or in part by public funds.’”

We contend that the El Paso Children’s Hospital meets the threshold outlined by the Texas Supreme Court ruling by virtue of the revenues it generates from federal funds. This is in addition to the fact that El Paso Children’s Hospital is owned by a public entity, UMC, and operates out of a building funded by the 2007 Bond.

## Our Request Is Required By The Texas Attorney General

Texas Attorney General Opinion GA-0666 states that “when an entity that believes it is not a governmental body under the terms of the PIA receives a request for information, the entity **should seek** a ruling from the Attorney General’s Open Records Division as to whether and to what extent, if any, the entity is actually a ‘governmental body.’ An entity that requests such a ruling does not thereby admit that it is in fact a governmental body.” [*emphasis ours*]

According to the response we received on April 22, 2021 from the El Paso Children’s Hospital, it appears that they *have unilaterally made the determination* that they are not a “governmental body” under the *Texas Public Information Act*.

To our knowledge the El Paso Children’s Hospital has not sought an opinion from the Texas Attorney General as required under GA-0666.

We believe that El Paso Children’s Hospital is a “governmental body” for the purposes of the *Texas Public Information Act*.

Furthermore, transparency in government affairs is the cornerstone of a functional government and the community benefits from the transparent accounting of its public funds. The community would benefit from understanding how the El Paso Children’s Hospital operates to avoid a repeat of the 2015 bankruptcy where the community, at large, was caught unawares of the financial difficulties facing the children’s hospital.

Under Texas Attorney General Opinion GA-0666, we respectfully request that your office seek an opinion from the Texas Attorney General asking for a determination as to whether the El Paso Children’s Hospital is a “governmental body” for the purposes of the *Texas Public Information Act*.

Should you have any questions or require any clarification please do not hesitate to contact me. I can be reached via electronic mail at: martin@martinparedes.com

Sincerely,

A handwritten signature in black ink, appearing to read "Martín Paredes", with a horizontal line underneath it.

Martín Paredes  
*El Paso News, Inc.*

Cc:  
Office of the Attorney General of Texas  
Attention Opinion Committee  
PO Box 12548  
Austin, TX 78711-2548

VIA ELECTRONIC MAIL: [javier.seanz@elpasochildrens.org](mailto:javier.seanz@elpasochildrens.org)  
Javier Seanz  
General Counsel  
El Paso Children's Hospital  
4845 Alameda Ave.  
El Paso, Texas 79905

County Judge Ricardo Samaniego  
VIA ELECTRONIC MAIL: [countyJudge@epcounty.com](mailto:countyJudge@epcounty.com)

County Commissioner 1 Carlos Leon  
VIA ELECTRONIC MAIL: [commissioner1@epcounty.com](mailto:commissioner1@epcounty.com)

County Commissioner 2 David Stout  
VIA ELECTRONIC MAIL: [commissioner2@epcounty.com](mailto:commissioner2@epcounty.com)

County Commissioner 3 Iliana Holguin  
VIA ELECTRONIC MAIL: [commissioner3@epcounty.com](mailto:commissioner3@epcounty.com)

County Commissioner 4: Carl L. Robinson  
VIA ELECTRONIC MAIL: [commissioner4@epcounty.com](mailto:commissioner4@epcounty.com)

# **EXHIBIT 1**

Subject: Request for information under the Texas Public Information Act.

Re: Texas Public Information Act Request

Dear Public Information Officer:

This correspondence constitutes a request pursuant to the Texas Public Information Act, Tex. Gov't Code Chapter 552. This request is made by Martin Paredes who frequently writes articles informing the community about the affairs of the government.

Pursuant to the Texas Public Information Act, I hereby request the following:

Any correspondence between Estela Casas, Executive Director of El Paso Children's Hospital Foundation and Cindy Stout, CEO of El Paso Children's Hospital between March 28, 2021 and April 1, 2021.

The Texas Public Information Act mandates that if you are unable to produce the information, I am seeking within 10 business days of the request, that you certify that fact in writing and set a date within a reasonable timeframe when the information will be made available.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

This request is made for public and non-commercial purposes by Martin Paredes who publishes articles about governmental affairs on the online publications: Border Politics, El Paso News and El Paso Politics. Because the request for information is for the benefit of the general public and will contribute to the public's understanding of its government, please waive the fees pursuant to Tex. Gov't Code, Chapter 552.267.

To the extent possible I request that the information be provided electronically. Materials may be sent by email to martin@martinparedes.com, or by responding to this electronic request, or by USPS mail to: El Paso News, Inc., PO Box 536421, Orlando, FL 32853.

Please do not hesitate to contact me with any questions or concerns.

Thank you for your kind attention to this request,

Martin  
El Paso News, Inc.

EPN Tracking no: 2021-04-001

# **EXHIBIT 2**

# **EXHIBIT 3**