



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

February 17, 1989

Mr. Ronald J. Neiman
Lewisville City Attorney
P. O. Box 777
Lewisville, Texas 75067

Dear Mr. Neiman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5606; this decision is OR89-59.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

As City Attorney of Lewisville, Texas, you have informed this office that Poco Mas Players, Inc., a nonprofit corporation, received an open records request for the following:

- 1) its annual financial statements from 1983 to 1988;
- 2) the income and expense analyses for every show produced by Poco Mas since its inception; and
- 3) all budgets used to request financial support from the City of Lewisville and/or the Lewisville Chamber of Commerce from 1983 to the present.

You indicate that Poco Mas Players is willing to release the third item listed above. You inquire, however, whether Poco

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Mas Players must release the other requested items and whether Poco Mas Players is subject to the Open Records Act.

Poco Mas Players, Inc., was established pursuant to the Texas Non-Profit Corporation Act, V.T.C.S. article 1396. Article 1396-2.23A(C) provides that, with certain exceptions not applicable here, all records, books, and annual reports of non-profit corporations established under that article must be kept at the registered office or principal office of the corporation for at least three years and must be made available to the public for inspection and copying. We note that the corporation's bylaws contain a similar provision.

The requested financial records are public and must be released. See also, Attorney General Opinions JM-596, JM-477 (1986). Because the public nature of the requested records is governed by article 1396-2.23A, this office need not reach the question as to whether Poco Mas is a "governmental body" under section 2(1)(F) of the Open Records Act. See generally Attorney General Opinion JM-821 (1987).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-59.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
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JSR/RWP/bc

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