



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 8, 1989

Mr. James W. Knowles
Wilson, Miller, Spivey,
Sheehy & Knowles
Attorneys & Counselors
P. O. Box 7339
Tyler, Texas 75711

Dear Mr. Knowles:

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# 4459; this decision is OR89-80.

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.

You inquire whether the Tyler Junior College Foundation (the foundation) is a "governmental body" as that term is defined in the Open Records Act. You state that the foundation was created as a private, non-profit organization, that there has never been a "contractual relationship" between the foundation and Tyler Junior College District, that the foundation has received no money from the Tyler Junior College District and that it is exclusively supported by private funds. We note that although most corporations established pursuant to the Texas Non-Profit Corporation Act, V.T.C.S. article 1396, are required to provide all records, books, and annual reports to the public, the Tyler Junior College Foundation is exempt from that requirement. See V.T.C.S. Art. 1396-2.23A(E)(3).

Mr. James W. Knowles
March 8, 1989
Page 2

Section 2(1)(F) of the Open Records Act provides that a governmental body subject to the Open Records Act includes:

the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof. (Emphasis added.)

Based on your explanation of the foundation, this office cannot conclude that the foundation is subject to the Open Records Act. Please be advised, however, that to the extent that the college district supplies the foundation with office space, equipment, supplies, utilities or personnel, the foundation is subject to the act. Attorney General Opinion MW-373 (1981). Records of any transactions of this sort are clearly public.

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 OR89-80.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

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