



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1998

Mr. Don Currie
Executive Director
Community Development Corporation
of Brownsville
1150 E. Adams, Second Floor
Brownsville, Texas 78520

OR98-0286

Dear Mr. Currie:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 112197.

The Community Development Corporation of Brownsville (the "corporation") received a request for information. You maintain that the corporation is not a governmental body for purposes of the Act, and request an opinion from this office as to the extent of the corporation's obligation regarding open records law. We have considered your arguments and have reviewed the information submitted.

The Act requires "governmental bodies" to make public, with certain exceptions, information in their possession. Section 552.003 of the Government Code defines "governmental body," in 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)(x).

Courts, as well as this office, have previously considered the scope of the Act's definition of "governmental body." In *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses "governmental bodies" subject to the Act "simply

because [the persons or businesses] provide specific goods or services under a contract with a government body.” *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted that the attorney general’s opinions generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide “services traditionally provided by governmental bodies.”

Id.

As noted above, in Attorney General Opinion JM-821 (1987), the attorney general stated,

The precise manner of funding is not the sole dispositive issue in determining whether an entity falls under the Open Records Act. Other aspects of a contract or relationship involving the transfer of public funds between a private and public entity must be considered in determining whether a private entity is a “governmental body” under the Open Records Act. For example, a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the section 2(1)(F) definition of a “governmental body.” . . . The overall nature of the relationship created by the contract is relevant in determining whether the private entity is so closely associated with the governmental body that the private entity falls within the Open Records Act. As indicated, the precise manner of funding is not the sole dispositive issue in determining whether an entity falls under the Open Records Act. (Footnotes omitted).

You inform this office that, according to the corporate charter filed with the Secretary of State, the corporation’s purpose “is to furnish assistance projects and undertakings for the improvement of the public welfare in the Brownsville metropolitan area, and to participate

in programs for the elimination of slum conditions, for urban redevelopment and for other programs and projects conducive to the progress of the community as such relate to adequate housing for persons with low and moderate income and to the elimination of slum conditions." You also inform us that the corporation contracts with the City of Brownsville (the "city") on an annual basis to achieve specific program outcomes relating to construction of affordable housing, downpayment assistance loans and rehabilitation of homes for elderly handicapped or single female heads of household. You state that the funds received from the city for the services the corporation performs under the contract are all provided to achieve the program outcomes and are directly attributable to the specific services described above.

Upon review of the submitted information, we conclude that the services provided by the corporation are those traditionally provided by a governmental body, and that the corporation and the city with whom it contracts have a common purpose and objective such that an agency-type relationship is created. Therefore, we conclude that the corporation is a governmental body for purposes of the Act. Accordingly, as you failed to submit a request for an open records decision to this office within ten business days of receiving the request for information, as prescribed by section 552.301, records related to those specific parts of the corporation's activities for which the corporation receives payment from the city are public records and must be released to the requestor.¹ See Open Records Decision No. 602 (1992) (Dallas Museum of Art is "governmental body" within meaning of Act only to extent that it receives support from City of Dallas and State of Texas; only documents relating to those sections of museum that are supported by city or state are public documents subject to Act; documents related to areas of Dallas Museum of Art that are not supported with public funds are not subject to Act).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

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¹We note you did not submit the requested information to our office for review. We caution that some of the information may be confidential by law or may implicate the proprietary interest of a third party. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

Ref.: ID# 112197

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