



Office of the Attorney General
State of Texas

September 25, 1998

DAN MORALES
ATTORNEY GENERAL

Mr. Frank Z. Rутtenberg
Wells Pinckney & McHugh, P.C.
800 One Alamo Center
106 S. St. Mary's Street
San Antonio, Texas 78205-3603

OR98-2310

Dear Mr. Rутtenberg:

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# 116756.

Las Casas Foundation ("Las Casas"), which your firm represents, received a request for a variety of information concerning the renovation and operation of the Majestic and Empire Theaters.¹ Specifically, the requestor requests the following categories of information:

- 1) The lease agreement between Las Casas and ACE, Inc., referred to in Paragraph X(j) of that lease agreement dated November 16, 1988 between the City of San Antonio and the Foundation for Cultural Arts in San Antonio.
- 2) A detailed accounting of the total cost to renovate the Majestic and Empire Theaters, and a detailed accounting of where and from whom the money came from.
- 3) The detailed accounting of all annual operating expenses relating to the Majestic and Empire Theaters since 1988, which Las Casas is required to prepare.

¹Initially, we note that in Open Records Letter No. 97-1300 (1997), this office ruled on a request for information submitted to city from the same requestor for related information.

In your letter to this office requesting a ruling, you assert that Las Casas is not a governmental body for purposes of section 552.003 of the Government Code. In the alternative, you argue that the submitted information is excepted from required public disclosure pursuant to sections 552.101, 552.104 and 552.110 of the Government Code, and assert that certain information does not exist.² We have considered your arguments and reviewed the submitted information.

A brief overview of the relationship between the related entities is necessary in considering the claims asserted by Las Casas. The city owns the Majestic and Empire Theaters. Las Casas, which formerly operated as the Foundation for Cultural Arts in San Antonio, is a Texas non-profit corporation formed to renovate and manage the Majestic and Empire Theaters. Arts Center Enterprises, Inc. ("ACE") leases and manages the theaters on behalf of Las Casas.

Before we can consider the application of the claimed exceptions to the submitted information, we must first consider whether the information requested is "public information" under the Act. Section 552.002(a) of the Government Code provides in pertinent part:

[i]n this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

At issue is also whether Las Casas falls within the definition set out in subdivision (A)(x). Section 552.003(1)(A)(x) of the Government Code defines "governmental body" 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.

Public funds are "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(5). Based on the definitions and discussion set out below, we conclude that Las Casas is not a "governmental body" under section 552.003 of the Government Code.

²In your letter to this office, dated May 8, 1998, you indicate that Las Casas will release to the requestor certain information from the "'Construction Escrow Accounts' [which] held all the funds received by Las Casas from [the city]."

Courts, as well as this office, previously have considered the scope of the Open Records Act's definition of "governmental body." See *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989). In Open Records Decision No. 1 (1973), this office concluded that the act does not apply to private persons or businesses simply because they provide goods or services under a contract with a governmental body. Open Records Decision No. 1 (1973) (concluding that bank that holds funds of governmental body is not subject to act). An entity that receives public funds is not a governmental body if its agreement 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." Open Records Decision No. 228 (1979) at 2; see also Attorney General Opinion JM-821 (1987). If, however, a governmental body makes an unrestricted grant of funds to a private entity to use for its general support, the private entity is a governmental body subject to the Open Records Act. Open Records Decision No. 228 (1979). If a distinct part of an entity is supported by public funds within section 552.003(a)(x) of the Government Code, the records relating to that part or section of the entity are subject to the Open Records Act, but records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992).

According to City of San Antonio Ordinance 82941, approved by the city in 1995, the renovation project was supported by an investment from ACE, along with a contribution from the city. After examining the ordinance enacted by the city, which approved capital improvement projects for the theaters and authorized the city to pay \$1.5 million to Las Casas so that it may make specific renovations to the theaters, and examining the lease agreements entered into by the city and Las Casas, which, *inter alia*, authorized Las Casas to alter and improve the leased properties, it is evident that Las Casas is not "supported in whole or in part by public funds." City of San Antonio Ordinance 82941 recites in part that

to accomplish restoration of these theaters, *the city entered into certain agreements with the Foundation for Cultural Arts in San Antonio ("Las Casas")* with actual operations and management of these facilities having been assigned by Las Casas to Arts Center Enterprises, Inc., ("ACE") through a separate Theater Management Agreement and Lease; . . .

Las Casas is undertaking a \$3,000,000 capital improvement renovation at the Majestic Theatre consisting of a major stage expansion and restoration of the second balcony and lobbies, as well as expanded support and storage space and freight elevator in the Little Brady Building in order to attract large Broadway shows. . . .

A.C.E. is contributing funding for this project in an amount of up to \$1,500,000.00; and, together with Las Casas, has requested that the remaining sum of up to \$1,500,000.00 be funded by the city. . . . (Emphasis added.)

The ordinance then sets forth several amendments to the lease agreements entered into by the city with Las Casas, which alter the obligations undertaken by both parties under the lease agreements.

The lease agreements indicate that the city is not supporting Las Casas in whole or in part with public funds. Further, based on our review of the submitted information, it is apparent that, in return for rental payments to the city (as lessor) over a term of years, Las Casas (the lessee) has the "use and enjoyment" of the premises of the theaters, including all "non-exclusive uses and easement rights." Las Casas is required to pay taxes on the property, as well as other fees. See "Lease of Majestic Theater and Empire Theater (Master Lease)", Parts II, III, V, VI, VIII, and XI. Therefore, the money appropriated by the city to pay for part of the renovation project is offered in exchange for definite and specific services, namely the

capital improvement renovation at the Majestic Theatre consisting of a major stage expansion and restoration of the second balcony and lobbies, as well as expanded support and storage space and freight elevator in the Little Brady Building.

City of San Antonio Ordinance 82941. Because we conclude that Las Casas is not a "governmental body" for purposes of section 552.003(1), the information requested is not "public information" for purposes of section 552.002 of the Government Code. See Open Records Decision No. 558 (1990) (unless governmental body has right of access to or ownership of information prepared by outside entity, information is not subject to Act). Based upon the facts presented, we conclude that the requested information is not subject to the Act and Las Casas is not required to comply with this open records request. We also advise the interested parties that while the information requested is not subject to the Act in the possession of Las Casas, we do not consider the outcome, in this ruling, should the same or similar information be possessed by the city.

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 any questions about this ruling, please contact our office.

Yours very truly,

A large, stylized handwritten signature in black ink that reads "Sam Haddad". The signature is written over the typed name and title.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref: ID# 116756

Enclosures: Submitted documents

cc: Mr. Glenn Stehle
701 N. St. Mary's
San Antonio, Texas 78205
(w/o enclosures)