



August 23, 2000

Ms. Linda R. Frank
Assistant City Attorney
City of Arlington
200 West Abram Street, Box 231
Arlington, Texas 76004-0231

OR2000-3232

Dear Ms. Frank:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 138276.

The City of Arlington (the "city") received a request for "any and all records of when an ambulance was dispatched to" Six Flags over Texas and Hurricane Harbor/Wet'n Wild for a ten year period. Specifically, the requestor asks for "copies of Rural Metro's treatment reports that include the time and date of the ambulance run, the patient's name, a detailed narrative of the type of injury and how it occurred, a detailed narrative of the treatment that was administered and whether or not the patient was transported." You explain that the requestor clarified the request to exclude records "of when an ambulance was dispatched." You state that the city has no records responsive to the request because ambulance service for the city is provided by Rural/Metro Ambulance Service ("Rural/Metro") which you assert is an independent contractor. You explain that Rural/Metro creates and maintains the patient treatment records exclusively. You contend that Rural/Metro is not a governmental body as defined by Government Code section 552.003 and that the city has no right of access to the records. In the alternative, you claim that the requested information is excepted from disclosure pursuant to the Emergency Medical Services Act and the Medical Practice Act. You have submitted a copy of the ambulance services contract and the City of Arlington Ambulance Ordinance ("ordinance"). We have considered your claims and reviewed the submitted information.

An entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under section 552.003(1)(A)(x) of the Government Code. "Public funds" are "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(5). However, the Act does not apply to private persons or businesses simply because they provide goods or services under a contract with a governmental body. See Open Records Decision No. 1 (1973). An entity that receives public funds in exchange for services as would be expected in a typical arms-length contract between a vendor and purchaser is not a governmental body. See Attorney General Opinion JM-821 (1987); Open Records Decision No. 228 at 2 (1979). 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 Act. *Id.* If a distinct part of an entity is supported by public funds within section 552.003(1)(A)(x) of the Government Code, the records relating to that part or section of the entity are subject to the Act, but records relating to parts of the entity not supported by public funds are not subject to the Act. See Open Records Decision No. 602 (1992).

In *Kneeland v. Nat'l Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), the court of appeals recognized that opinions of the Texas Attorney General do not declare private persons or businesses "governmental bodies" subject to the Act simply because they provide specific goods or services under a contract with a government body. *Id.* at 228 (*citing* 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. (emphasis added).

To support your contention that Rural/Metro is not a governmental entity under section 552.003, you state the following:

This is an arms-length contract arrangement between the City and an independent contractor The City, a home-rule city, has passed appropriate resolution and ordinance under the Texas Health [and Safety] Code, § 773.051, providing strict municipal regulation for such ambulance service. As is shown by the contract and ordinance . . . the city meets the test of Open Records Decision . . . No. 228 (1979) and Attorney General Opinion JM-821 (1987). The City 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.”

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Rural/Metro is not a governmental body and is not supported by or expending public funds. The City receives a quid pro quo in the form of specific, measurable ambulance services for its citizens meeting the test of *Kneeland*[, 850 F.2d 224]. The city receives well-regulated, quality ambulance services for its residents . . . and pays a certain fee for the services provided The funds expended through the Contract and Ordinance are not an unrestricted grant of funds to a private entity to use for its general support.

After considering your arguments and reviewing the submitted ambulance services contract and ambulance ordinance, we agree that Rural/Metro is not a governmental body as defined by section 552.003. However, that does not end our inquiry in this instance.

Section 552.002 of the Government Code defines “public information” as “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.” Information is generally public information within the Act when it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 at 4 (1995). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body’s custody. *See* Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. *See* Open Records Decision No. 518 (1989).

You state that the city has no right of access to the ambulance records. We disagree with this assertion. Section 4.02, Article IV of the ordinance provides as follows:

Section 4.02 Provider Records and Reports

Any provider shall maintain a daily manifest upon which shall be recorded *the time, date, place of origin, patient's name and address, destination, and charges for each trip*. Each such provider shall retain and preserve all daily manifests for at least eighteen (18) months, and such manifests shall be available for inspection by the [Emergency Physician's Advisory Board ("EPAB")], License Officer, Medical Director or his/her duly authorized representatives upon request. Any provider shall keep accurate records of the receipts and expenses from operations and such other operating information as may be required by the License Officer. Each such provider shall maintain such records at a place readily accessible for examination by the EPAB License Officer, or Medical Director.

(Emphasis added). In addition, the ambulance contract provides that Rural/Metro shall complete and provide to the city's Fire Chief "an approved patient report form." *See Ambulance Contract*, pp. 2, 22. The ordinance defines the "EPAB" as a board empowered to perform medical audits and to recommend and promulgate standards, rules, and regulations related to the medical and clinical aspects of ambulance service in the city. *See City of Arlington Ambulance Ordinance*, Article I, Section 1.01. The ordinance provides that the EPAB serves as an advisory, regulatory, and fact-finding body for the city council in regard to medical control of the ambulance system. *See id.*, Article II, section 2.01. The ordinance defines "license officer" as the Fire Chief of the city or his duly authorized representative, including the city EMS liaison, serving as licensing officer for certification of ambulance, dispatch, and other personnel under approved standards formulated by the EPAB. *See id.*, Article I, Section 1.01.

We conclude that the city has access to certain emergency ambulance service records as set forth in Article IV, section 4.02 of the ordinance. Thus, the information delineated in that section is public information under Government Code section 552.002.

We reiterate that the requestor seeks treatment reports that include the time and date of the ambulance run, the patient's name, a detailed narrative of the type of injury and how it occurred, a detailed narrative of the treatment that was administered and whether or not the patient was transported. We conclude that a portion of this information is public information, specifically information to which the city has access to under section 4.02 of the ordinance. In this instance, the type of information subject to the Act consists of the time and date of the ambulance run, the patient's name, and whether or not the patient was

transported. The remaining information sought by the requestor is not public information under section 552.002 and may be withheld on that basis.

As to the information subject to the Act, we note that you have not submitted information responsive to the request. Pursuant to section 552.301(e)(1)(D), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Thus, you have failed to comply with section 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). As you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

In summary, the information consisting of the time and date of the ambulance run, the patient's name, and whether or not the patient was transported must be released to the requestor. The remaining information may be withheld.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138276

Encl. Submitted documents

cc: Mr. Sean M. Wood
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(w/o enclosures)