



March 23, 2001

Ms. Beth Chapman
Associate Commissioner and Legal Counsel
The Southland Conference
1700 Alma Drive, Suite 550
Plano, Texas 75075

OR2001-1141

Dear Ms. Chapman:

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# 145255.

The Southland Conference (the "conference") received a request for all information regarding an inquiry into the eligibility of two student athletes and their relationship with a named individual. You first claim that the conference is not a "governmental body" for purposes of the Act (the "Act"), and therefore, the conference is not subject to the requirements of the Act. You further claim that even if the conference is determined to be subject to the Act, the requested information is excepted from disclosure under the federal Family Educational Rights and Privacy Act of 1974. We have considered your arguments and reviewed the submitted information.

We first address your argument that the conference is not a governmental body for purposes of the Act. Under the Act, the public generally has a right of access to information in the possession of a governmental body. See Gov't Code §§ 552.002, .021. A "governmental body" is defined, in relevant part, as "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." *Id.* § 552.003(1)(A)(x). However, this office has long held that private persons or businesses are not "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 v. Nat'l Collegiate Athletic Ass'n*, 850 F.2d 224, 228 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989) (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 the *Kneeland* court noted, when considering the breadth of the Act’s definition of “governmental body,” this office has distinguished between private entities receiving public funds in return for specific, measurable services and entities receiving public funds as general support.

In *Kneeland*, the United State Court of Appeals for the Fifth Circuit addressed the issue of whether the National Collegiate Athletic Association (the “NCAA”) and the Southwest Athletic Conference (the “SWC”) were governmental bodies for purposes of the Act. *Id.* at 225. The court noted that the NCAA “is a private association composed of public and private colleges and universities” that “derives its income from . . . dues, assessments on television gross rights fees, and championship games and tournaments.” *Id.* at 226. The court concluded that the NCAA received at least some public funds. *Id.* at 227. However, the court held that the NCAA did not receive these funds for its general support. *Id.* at 230. Rather, it noted that the public funds received by the NCAA were exchanged for specific, measurable services, such as supporting various NCAA committees; producing publications, television messages, and statistics; and investigating complaints of violations of the NCAA’s constitution, bylaws, or regulations. *See id.* at 229-30.

Similarly, the *Kneeland* court noted that the SWC was “a non-profit association composed of nine member-universities, including four Texas public institutions,” that derives its income from “gate receipts and television fee assessments.” *Id.* at 226. The court held that the SWC, like the NCAA, received public funds. *Id.* at 228. However, the court further held that “[t]he SWC provide[d] specific and gaugeable services” in return for those funds. *Id.* at 231. Specifically, the court cited the promotion and administration of competitive awards, the training and scheduling of game officials, and the maintenance of relations with the news media as examples of the specific services provided by the SWC to its members. *Id.* Thus, the court concluded that neither the NCAA nor the SWC was a governmental body for purposes of the Act. *Id.*

Here the conference argues that, while it receives public funds, it provides specific services similar to those provided by the SWC in *Kneeland* in return for those funds. The conference has submitted copies of its constitution, bylaws, and operating code in support of its argument. The conference is a non-profit corporation composed of eleven member universities, including six Texas public universities and five Louisiana public universities. According to the conference's bylaws, the conference receives at least part of its financing from entrance fees and annual dues paid by member universities, as well as portions of the receipts from postseason tournaments and portions of the television revenues from conference games. Therefore, at least some of the funds received by the conference are public. *See id.* at 227-28. In return for these funds, the conference provides a myriad of services. For example, the conference determines a champion among the member universities in eight men's sports and eight women's sports. Furthermore, the conference has established general policies and procedures as well as specific, uniform rules for the sports in which it determines a champion. The conference establishes playing schedules for its member universities, compiles statistical rankings on a weekly basis in all team sports in which it determines a champion, publishes a record book annually, and administers awards to teams, athletes, and coaches. Furthermore, the conference determines the site at which a championship will be held. The conference also has established eligibility and conduct rules for its member universities and their student athletes. The conference has the duty of investigating violations of and enforcing conference and NCAA rules and regulations. Additionally, the conference's constitution establishes eighteen committees consisting mainly of member university officials and employees. Among other things, these committees ensure compliance with NCAA and conference rules, supervise the administration of the conference's post-season basketball tournaments, and report on marketing and television, academic and student athlete welfare, awards, compliance issues, business issues, sports medicine issues, women's sports issues, and officiating issues.

Therefore, while the conference receives public funds for its support, we conclude that the conference provides "specific and gaugeable services" in return for those funds. *Id.* at 229-31. Consequently, we find the conference is not a governmental body for the purpose of the Act, and therefore, the conference is not required to disclose the requested information to the requestor under the Act.

This letter ruling is limited to the particular records at issue in this request and limited 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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 145255

Encl: Submitted documents

cc: Mr. Russell Carollo, Reporter
Dayton Daily News
1947 Newcon Road Extension
Red Creek Ranch
Pueblo, Colorado 81005
(w/o enclosures)