



The Attorney General of Texas

January 15, 1982

MARK WHITE
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Mr. Neeley C. Lewis
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Open Records Decision No. 302

Re: Availability under Open
Records Act of information
held by non-profit corporation

1607 Main St., Suite 1400
Dallas, TX. 75201
147/42-8944

824 Alberta Ave., Suite 160
Paso, TX. 79905
15/533-3484

100 Dallas Ave., Suite 202
Houston, TX. 77002
713/650-0666

106 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501
361/682-4547

100 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

An Equal Opportunity/
Affirmative Action Employer

Dear Mr. Lewis:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether certain information in the files of the Brazos County Industrial Foundation is available to the public.

The Open Records Act is applicable to the foundation only if it is "governmental body" as defined in section 2(1)(F) of the act:

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. . .

The Brazos County Industrial Foundation is a non-profit corporation whose purposes, according to its articles of incorporation, are, inter alia:

. . .to render aid to manufacturing and industrial enterprises situated in such area [Brazos County]; and to induce the location in said County of other manufacturing and industrial establishments.

In Open Records Decision No. 228 (1979), we were asked to determine whether the North Texas Commission, a private non-profit corporation chartered to promote the interest of the Dallas-Fort Worth metropolitan area, was a "governmental body" for purposes of the Open Records Act. Although the city of Fort Worth had contracted with the commission to pay it \$80,000 per year for three years, the contract did not impose "a specific and definite obligation on the commission to provide a measurable amount of service in exchange for a certain

amount of money." Open Records Decision No. 228 found that the city of Fort Worth had to be considered in the position of "supporting" the commission with public funds. The funds paid to the commission were used for its "general support. . . rather than being attributable to specific payment for specific measurable services." As a result, the decision concluded that the North Texas Commission was "supported. . . in part by public funds," and hence, was a governmental body under the Open Records Act. See Open Records Decision Nos. 201 (1978); 195 (1978).

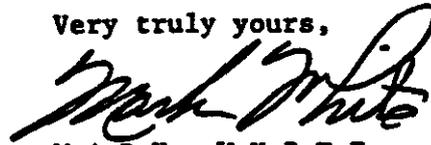
Open Records Decision No. 228 (1979) held that the phrase "supported in whole or in part by public funds" refers to any agreement between a political subdivision and any "organization, corporation, commission, committee, institution, or agency" which transfers public funds from the political subdivision to such entity, but fails to "[impose] a specific and definite obligation on the [entity] 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." This agreement failed to provide adequate consideration flowing to the political subdivision, and the public funds passing to such entity, although in the possession of private hands, retained their character as public funds. See Parr v. Duval County, 304 S.W.2d 957 (Tex. Civ. App. - Eastland 1957, writ ref'd n.r.e.); City of Fort Worth v. Reynolds, 190 S.W. 501 (Tex. Civ. App. - Fort Worth 1916, writ dism'd w.o.m.).

The Brazos County Industrial Foundation is similar in many respects to the North Texas Commission. You indicate that in 1980, the foundation received an unrestricted grant of \$48,000 from the city of Bryan. In our opinion, such a grant is virtually identical to the funds paid to the North Texas Commission by the city of Fort Worth. Therefore, we must conclude that the foundation is "supported. . . in part by public funds." Accordingly, the Brazos County Industrial Foundation is a "governmental body" under section 2(1)(F) of the Open Records Act.

The documents being sought in this instance are those subsequent to January 1, 1979, which relate to the foundation's attempts to recruit Westinghouse Corporation to the Brazos County area. You have not suggested the applicability of any particular exception to the information except section 3(a)(4). Section 3(a)(4) excepts information "which, if released, would give advantage to competitors or bidders." Even if the exception could be construed to apply to industrial recruitment, it is not applicable after bidding has been completed and a particular contract is in effect. Open Records Decision No. 232 (1979). We are advised that the Westinghouse Corporation has been successfully recruited to the Brazos County area. Consequently, the information is not excepted under section 3(a)(4).

No other exception under section 3(a) is clearly applicable to the documents you have submitted. We conclude therefore that information in the files of the Brazos County Industrial Foundation relating to the recruitment of Westinghouse Corporation is available to the public under the Open Records Act.

Very truly yours,



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Assistant Attorney General

APPROVED:
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Jon Bible
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