



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 17, 1993

Honorable Penny Redington
Ellis County Judge
Ellis County Courthouse
Waxahachie, Texas 75165

OR93-245

Dear Judge Redington:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 19560.

You received a letter from the publisher of The Ferris Press asking you to "[p]lease provide a copy of a letter of request to Johnson, Johnson & Roy, Inc., ("JJR") permitting representatives of the Ferris Press to inspect, examine, and if applicable, copy said documents." The letter from The Ferris Press does not identify "said documents." We assume "said documents" refers to the following information requested in Open Records Letter No. OR93-214 (1993):

1. A list of all, consultants, contractors and sub-contractors with addresses and a copy of any payments, checks, or disbursements made to such consultants, contractors or subcontractors.
2. [I]ndicate if the expenditures to the above referenced consultants, contractors and sub-contractors were advertised for open bid. If so, please furnish the results of those bids.
3. The source of funds to make expenditures to the above referenced consultants, contractors and subcontractors.
4. [D]ocumentation regarding the bidding process and the maximum amount of any expenditure exempt from the bid process.
5. Budget Expenditures: Johnson, Johnson & Roy per budget agreement with Ellis County, Texas [] for the period from May 11, 1990, to January 19, 1993.

6. All documentation concerning two contracts, the first for \$3,500,000.00 with the Texas National Research Laboratory Commission, and the second for \$558,900.00 with Ellis County.

In Open Records Letter No. OR93-214, we addressed whether JJR, which received an open records request from The Ferris Press for certain information, is a governmental body under the Texas Open Records Act. We concluded that it was not. Furthermore, we determined that since the requested information was not prepared for the use of a governmental body, it was not subject to the Open Records Act. See Open Records Letter No. OR93-214 at 3.

Section 3(a) of the Open Records Act states that:

All information collected, assembled, or maintained by or for governmental bodies, *except in those situations where the governmental body does not have either a right of access to or ownership of the information*, pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public. [Emphasis added.]

Thus, information in the physical custody of a private entity may be subject to the Open Records Act, if the private entity prepared information for a governmental body and the governmental body has a right of access to or ownership of the information. See Open Records Decision Nos. 558 (1990); 462 (1987).

Where a contract between a private entity and a governmental body grants the governmental body a right of access to information in the physical custody of the private entity, the private entity holds the information for the governmental body; such information is therefore subject to the Open Records Act. See Open Records Decision No. 462 (1987). You provided us with a copy of the professional services contract between Ellis County and JJR for adoption and implementation assistance for the Ellis County Plan and Zoning Ordinance.¹ We will examine the provisions of that contract to determine whether a representative of Ellis County has a right of access to any of the requested information.

The contract contains the following provisions:

¹Ellis County has been granted zoning authority by Subchapter H of the Local Government Code. See Local Gov't Code §§ 231.151 - 231.165 (zoning around Super Collidor).

SCOPE OF SERVICES

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The particular services, and the personnel performing the services within each of the Work Assignments shall be ordered and authorized by the County prior to performance by JJR on a "Work Order and Notice to Proceed" form executed by the Chairman, Vice Chairman, or Secretary of the Ellis County Planning & Zoning Commission.

...

Method of Payment

Payments on account of JJR's services shall be made monthly within thirty (30) days of receipt of invoice.

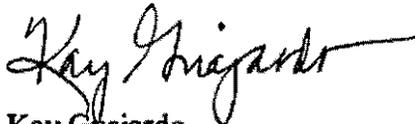
....

Direct reporting responsibility by JJR shall be to the Ellis County Planning and Zoning Commission, except as otherwise directed by the Ellis County Commissioners Court.

These provisions do not give the county or its representatives a right of access to any of the requested information. Thus, JJR does not hold the requested information for Ellis county. Since JJR does not hold the information for Ellis County, it is not subject to the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/SLG/lmm

Enclosure: Open Records Letter No. OR93-214

cc: Mr. Charles D. Hatfield, Jr.
Publisher
The Ferris Press
P.O. Box 370
Ferris, Texas 75125