



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Mr. David F. Beale
President
Greater Houston Preservation Alliance
1415 Louisiana, Suite 2550
Houston, Texas 77002

OR94-871

Dear Mr. Beale:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29094.

The Greater Houston Preservation Alliance (the "alliance") has received a request for "records of the Sabine Fund and of the . . . 'Cannata Houses.'" Specifically, the requestor seeks the following information:

1. any report, audit, evaluation, or investigation of the Greater Houston Preservation Alliance regarding the Cannata Houses or the Sabine Fund;
2. information in any account, voucher, or contract relating to the receipt or expenditure of Sabine Fund dollars or funds used for the Cannata Houses;
3. record of financial transactions involving the Sabine Fund from January 1, 1992 to the present;
4. name of each official and the final record of voting on any proceedings to do with the Cannata Houses or the Sabine Fund;
5. all working papers, research material and information used to estimate the need for expenditures of funds for the Cannata Houses or from the Sabine Fund;

6. budgets, contracts, applications for funding, sources of funding and records of spending of funds for the Cannata Houses or from the Sabine Fund.

We address here your contention that the alliance does not constitute a "governmental body" within the meaning of section 552.003 of the Government Code and is therefore not subject to the Open Records Act. Because the requestor seeks information specific to the Sabine Fund and Cannata Houses project, we limit our discussion here to whether information relating to these entities is subject to the Open Records Act.

The Open Records Act's definition of "governmental body," found in section 552.003 of the Government Code, includes the following:

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.

Gov't Code § 552.003(a)(10). [emphasis added]. Any given entity is a "governmental body" within the meaning of section 552.003 only to the extent that it is supported by public funds. Open Records Decision No. 602 (1992). Thus, only information relating to those portions of a governmental body that are supported by public funds are subject to the Open Records Act. *Id.* In *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses "governmental bodies" subject to the Open Records Act "simply because [the persons or businesses] provide specific goods or services under a contract with a government body." *Kneeland*, 850 F.2d at 228. 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

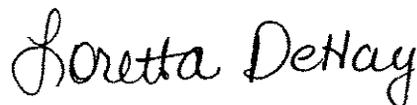
departments, will be considered governmental bodies if they provide "services traditionally provided by governmental bodies."

Id. In *Kneeland* the court found that although the National Collegiate Athletic Association ("NCAA") and the Southwest Athletic Conference ("SWC") receive public funds, the two organizations do not qualify as governmental bodies under section 552.003 of the Open Records Act because the funds the NCAA and the SWC received were not for their general support, but rather were received in exchange for known, specific, and measurable services. *Id.* at 225-31.

You advise us that the alliance is a nonprofit eleemosynary corporation incorporated under title 26, section 501(c)(3) of the United States Code. We understand that the alliance has received public grants for general support from the Cultural Arts Council of Houston, which is itself a nonprofit corporation incorporated under section 501(c)(3). The Cultural Arts Council is largely funded by the City of Houston. You advise us that the Sabine Fund does not include any of the general-purpose grants received from the Cultural Arts Council or any other public funds. Thus, the section of the alliance that includes the Sabine Fund is not a "governmental body" within the meaning of section 552.003 to the extent that it includes the Sabine Fund. In addition, you advise us that the alliance received a grant from the Texas Historical Commission for purposes of restoring the foundations of the Cannata Houses. This grant clearly 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." Thus, the section of the alliance that includes the Cannata Houses project is not a "governmental body" within the meaning of section 552.003. Given these facts, we conclude that the Open Records Act does not require the alliance to make the requested information available to the requestor.

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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 29094

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