



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 23, 1995

Mr. Robert C. Feldman  
Weil, Gotshal & Manges  
100 Crescent Court, Suite 1300  
Dallas, Texas 75201-6950

OR95-078

Dear Mr. Feldman:

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# 24527.

The Dallas Plan, Inc. (the "Dallas Plan"), which you represent, has received a request for certain "public comment cards." Specifically, the requestor seeks:

Copies of any and all public comment cards received by Dallas Plan regarding Dallas Plan framework . . . and any summary of results of community meetings on Dallas Plan held since August 1992.<sup>1</sup>

You claim that the requested information is not subject to the act and need not be disclosed.

You claim that the requested information is not subject to the Open Records Act because it is not maintained by a governmental body. You advise us that Dallas Plan receives support from the City of Dallas (the "city") only in the form of office space, office services, and two management program participants. You admit that Dallas Plan is a governmental body to the extent that it receives such support. You object, however, to releasing the requested information on the grounds that it has no relation to the portion of Dallas Plan that may be considered a governmental body for purposes of the Open Records Act. For the reasons given below, we disagree with your contention that the Dallas Plan is not a governmental body subject to the Open Records Act.

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<sup>1</sup>The requestor seeks additional information relating to the Dallas Plan. You advise us, however, that this information has been made available to the requestor. Accordingly, we need not address its availability under 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).

Courts, as well as this office, previously have considered the scope of the Open Records Act's definition of "governmental body." In *Kneeland v. National Collegiate Athletic Ass'n*, 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 (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.* 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.

As the *Kneeland* court noted, when considering the breadth of the Open Records 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. For example, in Open Records Decision No. 228 (1979), we considered whether the North Texas Commission (the "commission"), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, constituted a "governmental body" under the Open Records Act. Open Records Decision No. 228, at 1. The contract existing between the commission and the City of Fort Worth obligated Fort Worth to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission to, among other things, "continue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common city's interests and activities." *Id.* at 2. We found that this broad provision failed to impose on the commission a specific and definite obligation to provide a measurable amount of service in exchange for a certain amount of money, as one would expect to find in a typical arms-length contract for services between a vendor and a purchaser. Therefore, the arrangement failed to provide adequate consideration flowing to the cities supporting the commission. *Id.* The contract placed Fort Worth, and other cities engaged in identical contracts with the commission, in the position of providing general support for the operation of the commission. *Id.* Accordingly, we found the commission to be a governmental body for purposes of the Open Records Act. *Id.*; see also Attorney General Opinions JM-821 (1987) (volunteer fire department received general support from rural fire prevention district because department received public funds from district to provide all of district's needed services, as well as other close ties); JM-116 (1983) (Gulf Star Conference, intercollegiate athletic conference, was governmental body subject to act because funds member colleges pay to Conference used for general support); MW-373 (1981) (University of Texas Law School Foundation, nonprofit corporation that solicits donations and expends funds to benefit University of Texas Law School, was governmental body because university provided foundation with office space, utilities and telephone, and reasonable use of university's equipment and personnel); Open Records Decision Nos. 621 (1993) (concluding that Arlington Economic Development Foundation is "governmental body" within meaning of Open Records Act and that Arlington Chamber of Commerce is governmental body to extent that it receives support from Arlington Economic Development Foundation); 302 (1982) (Brazos County Industrial Foundation, nonprofit corporation, was governmental body subject to act because it received unrestricted grant from City of Bryan); *cf.* Open Records Decision No. 602 (1992) (Dallas Museum of Art was governmental body only to extent that it received support from City of Dallas and State of Texas).

You advise us that the Dallas Plan "coordinates and supports a group of consultants working on a long-range plan for the City of Dallas." The city "endorsed" the Dallas Plan on August 26, 1992, in Resolution No. 923100. This "endorsement" included specific requirements for the tasks to be completed by the Dallas Plan and a commitment that the Dallas City Manager would assist the Dallas Plan in completing its tasks. The city further "endorsed" the Dallas Plan by "accepting a joint schedule of events and activities and a set of goals and criteria," by "supporting widespread community discussion of The Dallas Plan

framework as the means for amending, modifying or refining it for subsequent [City] Council action,” and by agreeing to work, through the city council and city staff, collaboratively with the Dallas Plan to further long-term planning and development objectives in the city. You also indicate that the city provides “general office services to Dallas Plan,” including the use of office space; telephone, facsimile, and copying services; and city personnel. However, no contract exists between the city and the Dallas Plan.

You contend that “Dallas Plan is a non-profit corporation providing a specific service in the form of its long-range plan, to the City of Dallas.” We believe, however, that the support the city gives to the Dallas Plan fails to impose on the Dallas Plan a specific and definite obligation to provide a measurable amount of service in exchange for a certain amount of money, as one would expect to find in a typical arms-length contract for services between a vendor and a purchaser. Therefore, the arrangement fails to provide adequate consideration flowing to the city supporting the Dallas Plan.<sup>2</sup> Significantly, no contract exists between the city and the Dallas Plan. Consequently, the Dallas Plan is under no definite obligation to provide a measurable amount of service in exchange for a certain amount of money, as one would expect to find in a typical arms-length contract for services between a vendor and a purchaser. The lack of any definite obligation thus puts the city in the position of providing general support for the operation of the Dallas Plan. We conclude, therefore, that the entire Dallas Plan constitutes a “governmental body” within the meaning of section 552.003 and that the Dallas Plan must release all of the requested information in its possession unless the information falls within one of the exceptions enumerated under the Open Records Act. The Dallas Plan has not asserted any of the Open Records Act’s exceptions to required public disclosure. Accordingly, the requested information must be released in its entirety.

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 should 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,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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<sup>2</sup>The mission of the Dallas Plan also suggests that the Dallas Plan has a “common purpose” with the city and that the Dallas Plan performs services usually provided by the governmental body itself. We note that a governmental body may not avoid the requirements of the Open Records Act by creating a private, nonprofit entity to carry out governmental functions.

MAR/GCK/rho

Ref.: ID# 24527

Enclosures: Submitted documents  
Open Records Decision No. 602

cc: Mr. Chris Kelley  
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(w/ Open Records Decision No. 602)