



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 22, 1996

E. Ross Craft, Esq.
Houston Regional HIV/Aids
Resource Group, Inc.
811 Westheimer, Suite 201
Houston, Texas 77006

OR96-0766

Dear Mr. Craft:

As legal advisor to the Houston Regional HIV/AIDS Resource Group, Inc. ("the Resource Group"), you ask whether the Resource Group is subject to the Open Records Act. You received a request for records concerning the Resource Group's contracts with a foundation and we assigned this matter ID# 29471. The requestor asked for records pertaining to contracts with a particular foundation, including, but not limited to, grant proposals, annual reports, inspection reports, audits, tax returns (IRD Form 990), payment vouchers, canceled checks and correspondence. He withdrew his request prior to the ten day deadline for submitting a written request for a decision to this office.

You submitted the matter to us with a list of questions you would like us to answer concerning the application of the Open Records Act to the Resource Group and its records. In a subsequent letter, you informed us that the original request for information that you sent us is typical of other requests you have received since then, and that you have deferred them while awaiting a ruling on ID# 29471. In response to our request for records, you submitted an application for funding for rural case management services. You claim that the application file is excepted in its entirety by section 552.104 of the Government Code.

The Open Records Act does not authorize this office to give advisory opinions,¹ but only to determine whether specific information is subject to the Open Records Act. Thus, we cannot determine whether a list of records is generally excepted from disclosure pursuant to the Open Records Act. We can only determine whether specific records requested by a member of the public are excepted from disclosure, when the governmental body sends us the records, or representative samples thereof, with its arguments about the exceptions that apply and the reasons they apply. We cannot address your general questions, except for those that inquire whether the Resource Group is subject to the Open Records Act. See Open Records Decision Nos. 602 (1992) (portion of Dallas Museum of Art supported by public funds is subject to the Open Records Act); 1 (1973) (bank not subject to the Open Records Act).

Thus, we first consider whether the Resource Group is a governmental body as defined under section 552.003(a) of the Government Code. The definition of "governmental body" includes:

the part, section, or portion of an organization . . . [or] corporation
. . . that spends or that is supported in whole or in part by public
funds.

Gov't Code § 552.003(a)(10).

You state that the Resource Group, a nonprofit corporation, administers grants of state and federal funds for the delivery of services to HIV positive persons and their families. 42 U.S.C. § 300ff; Health & Safety Code ch. 85 (Human Immunodeficiency Virus Services Act). Some of the federal funds are received directly from the federal government and some are received through the Texas Department of Health. The federal grant funds received through the Department of Health are first appropriated to the department for the purposes for which they are granted. General Appropriations Act, Acts 1993, 73d Leg., ch. 1051, art. II, 1993 Sess. Law Serv. 4919. The department's grant program is required to coordinate the use of federal, local, and private funds. 25 TAC § 98.7(b)(1). The Resource Group receives grant applications from public and private service providers, awards the grants, and monitors the grantees for compliance with the state and federal requirements attached to the grants.

The Open Records Act defines "public funds" as "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(c). The grants of state funds that the Resource Group receives from the Department of Health are public funds within this provision. See Open Records Decision Nos. 201 (1978), 195 (1978).

¹Only those public officials who are authorized by section 402.042 of the Government Code to request Attorney General Opinions may seek advisory opinions in this office.

Grants of federal funds appropriated to state agencies may also be characterized as "funds of the state" for purposes of the Open Records Act. Open Records Decision No. 509 (1988) at 3. The Resource Group receives public funds of the state from the Department of Health and grants those public funds to services providers. The Resource Group spends public funds and it is therefore a governmental body within section 552.003(a)(10) of the Government Code.² *Id.*

You have submitted a typical grant application file³ from your office, claiming that it is excepted in its entirety by section 552.104 of the Government Code, which excepts the following information from the requirement of disclosure under the Open Records Act:

information that, if released, would give advantage to a competitor or bidder.

The purpose of section 552.104 is to protect the interests of a governmental body in situations such as competitive bidding and requests for proposals in which the governmental body may wish to withhold information to obtain more favorable offers. Open Records Decision No. 592 (1991) at 8. This section requires a showing of some specific actual or potential harm in a particular competitive situation. Open Records Decision Nos. 593 (1991), 541 (1990), 232 (1979).

You claim that release of grant applications would give a competitive edge to applicants, who might use the information to file a grievance or write similar proposals in the next funding cycle. You do not claim any competitive harm to the Resource Group in a particular competitive situation. Once a contract is awarded, there is ordinarily no longer any specific competitive situation to be protected by section 552.104. Open Records Decision No. 541 (1990) at 5. *See generally* Open Records Decision No. 124 (1976) (State Board of Insurance failed to show that grant application submitted to Social Security Administration was within section 552.104).

²Our conclusion is based on the specific language of section 552.003(a)(10) of the Government Code. *Cf. Weaver v. AIDS Servs.*, 835 S.W.2d 798, 802 (Tex. App.--Austin 1992, writ denied) (AIDS Services of Austin, a private, nonprofit corporation that provided education about AIDS prevention, was not a state actor when it excluded the plaintiff from a "safer sex" workshop conducted pursuant to a contract with the City of Austin and Travis County).

³We see nothing in the file of records that identifies any HIV positive individual. Thus, no issue is raised as to the confidentiality of such information.

You have not shown that the application file is excepted by section 552.104, and you have raised no other exception.⁴ Accordingly, these records are available to the public.

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,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/RHS/rho

Ref.: ID# 29471

Enclosures: Submitted documents

cc: Mr. James Robinson
Reporter
Houston Chronicle
P.O. Box 4260
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(w/o enclosures)

⁴You ask whether income tax returns of applicants are excepted from disclosure pursuant to the Open Records Act, but no income tax return appear in the records you have sent us. See Open Records Decision No. 600 (1992) at 8 (confidentiality of federal income tax return information).