



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 25, 1996

Mr. Louis J. Rodriguez
President, Midwestern State University
3410 Taft Boulevard
Wichita Falls, Texas 76308-2099

OR96-1760

Dear Mr. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100960.

Midwestern State University (the "university") received a request for "the university's book list for the 1996 fall semester." You state that the university does not compile or maintain a book list. You state that a private bookstore, which leases space from the university, solicits individual university departments or faculty members for book titles and compiles the complete book list itself. You claim therefore that the university cannot comply with the request for information.

The Open Records Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Section 552.002 of the Government Code, however, defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) *for a governmental body and the governmental body owns the information or has a right of access to it.*" [Emphasis added.]. Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See*, Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Open Records Act are: 1) information collected by consultant must relate to the governmental body's official business; 2) consultant must have acted as agent of the governmental body in collecting information; and 3) governmental body must have or be entitled to access to the information). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Open Records Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990) at 2. Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that

task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision No. 518 (1989) at 3.

In your letter to this office, you explain that the university "has access to review files held by [the bookstore] regarding the bookstore on our campus, this particular file is marked 'Confidential' and has not been removed from the [bookstore]."¹ The university's contract specifically gives the university access to all bookstore records. It appears, nonetheless, that the booklist is not maintained for the university. Open Records Decision No. 558 (1990) (information must be prepared for governmental body). The bookstore does not appear to prepare the list on behalf of university. We are unable to determine that the bookstore, by compiling and maintaining a complete booklist, is performing a task that otherwise would have been performed by the university. We conclude, therefore, that the booklist in question is not subject to disclosure under the Open Records Act.

Although in this case, the requested booklist is unavailable to the requestor, you state that the bookstore compiles the list through contact with individual university departments and faculty members. Thus, information concerning the required books for each class may indeed exist at the university. We note that a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 100960

¹ We note that governmental bodies are prohibited from entering into contracts to keep information confidential. Open Records Decision No. 514 (1988); *see also* Open Records Decision No. 605 (1992) (a governmental body may not use a contract to invoke section 552.101).

cc: Mr. Bryan Driskill
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