



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 25, 1997

Ms. Eileen Earhart Oldag
Executive Director
Caritas of Austin
308 East 7th Street
Austin, Texas 78701

OR97-1447

Dear Ms. Oldag:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106288.

Caritas of Austin ("Caritas") received a request from a former employee for copies of Board minutes from December 1996 to June 1997. You maintain that Caritas is not a governmental body for purposes of the Open Records Act, and request an opinion from this office as to the exact extent of Caritas' obligation regarding open records. We have considered your arguments and have reviewed the information submitted.

The Open Records Act requires "governmental bodies" to make public, with certain exceptions, information in their possession. Section 552.003 of the Government Code defines "governmental body," in part, as follows:

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.

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 (1979) 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, “[c]ontinue 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. In response to this provision, we stated, “[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of “supporting” the operation of the Commission with public funds within the meaning of section 2(1)(F). *Id.* Accordingly, we found the commission to be a governmental body for purposes of the Open Records Act. *Id.*

You state that Caritas receives funds from individuals, foundations, United Way, the City of Austin, Travis County and the Federal government, both directly and passed through. You further state that these funds are accessed through contract, are not unrestricted, and require the provision of specific, measured services. Among the documents you provided to this office is a "Community Action Network (CAN) 1996 Contract" between Caritas and Austin/Travis County Health and Human Services Department (the "department") in which Caritas appears to agree to the provision of meals, rental and utility assistance, prescription medication and glasses and other support services to eligible households. The funding for these services is provided by the department to Caritas through the contract. The agreement states in pertinent part:

[w]e acknowledge and appreciate your participation in the Community Action Network's new community planning, Application development and comprehensive application review process. As a result of this effort, we believe we have purchased service measures that will address critical conditions and achieve desired community impacts. Your agency will be assigned a Contract Manager who can provide technical assistance to help you achieve your projected service outputs and outcomes. In order to facilitate ongoing *interagency collaboration and community planning*, Contract Managers will be assigned to specific Community Action Network Issue Areas. . . . On behalf of the Austin/Travis County Health and Human Services Department staff, I want to express my appreciation *for your extensive participation and partnership with us in our effort to improve the quality of life for all residents of Travis County.*

(Emphasis added).

In addition, the proposal revisions submitted between Caritas and the Texas Department of Human Services for FY97 Refugee Social Services speak in terms of monitored contract outcomes, as well as the provision of employment and health and emergency services in exchange for a specified contract amount. As noted above, in JM-821 (1987), the Attorney General stated, "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.'"

Upon review of the submitted agreements, we conclude that Caritas and the governmental bodies with whom they contract have a common purpose and objective such that an agency-type relationship is created. Therefore, in the absence of other information from Caritas establishing that the funds received from the governmental agencies with which Caritas contracts are not used for the general support of Caritas, we conclude that Caritas is a governmental body for purposes of the Open Records Act. Caritas must therefore release the requested information to the requestor to the extent it exists. However, you state the requestor has asked that you provide copies of Board minutes to her on a regular basis.

A governmental body need not comply with a standing request to provide information "on a periodic basis," Open Records Decision No. 465 (1987), or on a weekly basis, Open Records Decision No. 476 (1987), or to treat a request as embracing information prepared after the request was made, or to inform the requestor subsequently when the information does come into existence, Open Records Decision No. 452 (1986).

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/rho

Ref.: ID# 106288

Enclosures: Submitted documents

cc: Ms. Sharon Franklin
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(w/o enclosures)