



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 21, 1998

Ms. Sylvia Banda  
HR Manager  
Capital of Texas Workforce Center  
2015 South IH-35, Suite 300  
Austin, Texas 78741-3812

OR98-2252

Dear Ms. Banda:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119026.

SER-Jobs for Progress, Inc. ("SER") received two requests for the requestor's daily sign-in/sign-out log sheets for the period of her employment with SER. First, you contend that SER is not a governmental body for purposes of the Open Records Act (the "act"). Second, you assert that the logs are not subject to the act because they do not constitute "public information" as defined by section 552.002. Lastly, you argue that the logs contain confidential information about third parties that is excepted from public disclosure. We have considered your arguments and reviewed the submitted information.

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, Open Records Decision No. 228 (1979) 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 (1979). 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. Noting this provision, Open Records Decision No. 228 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, the decision found the commission to be a governmental body for purposes of the Open Records Act. *Id.*

You explain that SER manages specific state and federal programs for the Capital Area Workforce Development Board (the "Board"). You state that SER receives state and federal funds to "operate . . . one-stop centers, which provide individuals with training and employment opportunities." You further state that SER does not have unrestricted use of these public funds and that SER provides specific and measurable services to the Board. You have submitted Agreement #97-01 and Modifications #1 and #2 which are contracts between the Board and SER. The contract states that the Board received a grant for the execution and implementation of a Comprehensive Job Training and Employment Program and agreed to provide "job training and employment opportunities which will lead to maximum employment opportunities and enhance self-sufficiency." The Board contracted for SER's services to implement the development programs. Under the contract, SER agrees to manage workforce development programs as provided for under federal and state laws, and SER agrees to oversee and operate the activities in the Workforce Centers. The funding for these services is provided by the Board to SER through the contract. A certain amount of funds is allocated for operation of the program, and a smaller amount is allocated for management of the program.

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, to the extent that SER is implementing and managing the Comprehensive Job Training and Employment Program, SER and the Board, with which SER contracts, have a common purpose and objective such that SER is providing services traditionally provided by the Board, a governmental body. Therefore, in the absence of other information from SER establishing that the funds received from the Board with which SER contracts are not used for the general support of SER in operating the workforce development programs, we conclude that SER is a governmental body for purposes of the Open Records Act only to the extent of its contractual involvement with the Board's job training program for which it is receiving public funds.

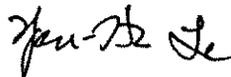
We next address the question of whether the log sheets are "public information" under the Open Records Act. You inform us that SER employees are required to sign in or out when they leave the office, and that the log is a management device used to locate staff members. Section 552.002 provides that information is generally public and subject to the Open Records Act if it is collected, assembled, or maintained (1) by a governmental body under a law or ordinance, (2) by a governmental body in connection with the transaction of official business, or (3) for a governmental body and the governmental body owns the information or has a right of access to it. SER clearly owns and has a right of access to the log sheets. Moreover, SER maintains the log sheets in connection with its transaction of

official business of managing and operating the workforce development programs on behalf of the Board. Thus, we conclude that the log sheets are subject to the act as they fall within the definition of "public information" under section 552.002.<sup>1</sup>

Lastly, you contend that the log sheets contain confidential information excepted from public disclosure. However, you have not cited to any statutes, nor are we aware of any, that makes the log-sheet information confidential. As you have not raised any other exceptions to required public disclosure, you must release the requested information.

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID#119026

Enclosures: Submitted documents

cc: Ms. Judy Hostetler  
5707 Fence Row  
Austin, Texas 78744  
(w/o enclosures)

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<sup>1</sup>We note that article 5.2.4 of the contract provides that "[r]ecords maintained in support of this program shall be made available to the public upon request and in accordance with the Texas Public Records Act."