



August 24, 1999

Mr. Ashton Cumberbatch, Jr.
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR99-2382

Dear Mr. Cumberbatch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126814.

The Arc of Texas (the "Arc"), which you represent, received a request for information related to the individual hired to fill the position of Project Coordinator. You have supplied the responsive information to this office for review. You ask if the Arc must respond to this request as a "governmental body" under section 552.003(1)A of the Government Code. You raise sections 552.101, 552.102 and 552.103 as potentially excepting the subject information from disclosure. As the issue of the designation of the Arc as a "governmental body" is determinative of this request, we do not address your arguments under these exceptions.

Chapter 552 of the Government Code requires a "governmental body" to make public, with certain exceptions, information in its possession. The term "governmental body" includes "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(1)(A)(x). Public funds are "funds of the state or a governmental subdivision of the state." Gov't Code § 552.003(5).

Courts, as well as this office, previously have considered the scope of the Public Information 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 Public Information 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)). The *Kneeland* court noted that the attorney general’s opinions interpreting the predecessor statute to section 552.003 of the Government Code generally examined the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

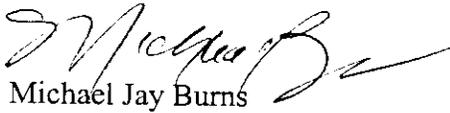
The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in 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 Public Information 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 Public Information 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. Thus, if a governmental body makes an unrestricted grant of funds to a private entity for use for its general support, that private entity is a “governmental body” subject to the Public Information Act. *Id.*

In this case, it appears that the Arc is primarily funded through funds other than "public funds," and does not receive unrestricted grants of public funds for use in its general support. Where the Arc administers programs which are publicly funded, it provides specific measurable services for those funds. Further, those services are not traditionally provided by governmental bodies. Therefore, under the facts and circumstances presented to this office, we conclude that the Arc is not a "governmental body" subject to the disclosure requirements of Chapter 552 of the Government Code. *See Blankenship v. Brazos Higher Education Authority, Inc.*, 975 S.W.2d 353 (Tex. App.--Waco 1998, pet. denied). The Arc need not release the requested information under the Public Information Act.

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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126814

Encl. Submitted documents

cc: Mr. Jose P. Baldonado
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(w/o enclosures)

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