



March 29, 2000

Mr. Robert Oberholtzer
Law Office of Robert Oberholtzer
2656 South Loop West, Suit 600
Houston, Texas 77054

OR2000-1217

Dear Mr. Oberholtzer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID#133463.

The Victims' Assistance Center, Inc. ("the Center") received a request for records relating to a specific case file. You claim first that the Center is not a governmental body and, therefore, is not subject to the Public Information Act (the "Act"); and second, in the alternative, that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the arguments you urge and reviewed the submitted information.

The Center is a private non-profit corporation founded in 1986, comprised of four controlling units including the Child Abuse Unit. The Child Abuse Unit developed the SAFE Family Visitation Program ("the Program") at issue here. In 1998 the Program qualified for and began receiving grants from the U.S. Department of Health and Human Services ("DHHS") pursuant to 45 C.F.R. Paragraph 303.109.

An entity that is supported in whole or in part by public funds or that spends public funds is a governmental body under section 552.003(1)(A)(x) of the Government Code. Public funds are "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(5). However, the Act does not apply to private persons or businesses simply because they provide goods or services under a contract with a governmental body. Open Records Decision No. 1 (1973). An entity that receives public funds in exchange for services as would be expected in a typical arms-length contract between a vendor and purchaser is not a governmental body. Attorney General Opinion JM-821 (1987); Open Records Decision No. 228 at 2 (1979). If, however, a governmental body makes an unrestricted grant of funds to a private entity to use for its general support, the private entity is a governmental body subject to the Act. *Id.* If a distinct part of an entity is supported by public funds within section 552.003(1)(A)(x) of the Government Code, the records relating to that part or section of the entity are subject to the Act, but records relating to parts of the entity not supported by public funds are not subject to the Act. Open Records Decision No. 602 (1992).

We do not believe that because the source of the Center's funding was a federal grant that the funds are *per se* not within the definition of "public funds" found in section 552.003. In *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the court of appeals recognized that opinions of the Texas Attorney General do not declare private persons or businesses "governmental bodies" subject to the Act simply because they provide specific goods or services under a contract with a government body. *Id.* at 228, *citing* ORD-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. (emphasis added). In Open Records Decision No. 509 (1988), we concluded that a private nonprofit corporation established under the federal Job Training Partnership Act and supported by federal funds appropriated by the state was a governmental body for the purposes of the Act. In that case, we analyzed the state's role under the federal statute and concluded the state acted as more than a simple conduit for federal funds, in part because of the layers of decision-making and oversight provided by the state in administering the programs. *Id.* at 2. We noted that federal funds were initially distributed to the state and then allocated among the programs at issue. Citing Attorney General Opinions JM-716 (1987) and H-777 (1976), we observed that federal funds granted to a state are often treated as the public funds of the state. In Open Records Decision No. 563 (1990), we held "[f]ederal funds deposited in the state treasury become state funds." *Id.* at 5 (*citing* Attorney General Opinions JM-118 (1983); C-530 (1965)).

DHHS derives its rule-making authority for administering the programs at issue here from section 469B of the Social Security Act, as added by section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). PRWORA provides federal grant funding to the states to establish and administer programs to facilitate visitation between children and non-custodial parents. States administer programs directly

or through contracts or grants with local public and private entities like the Center. Paragraph 303.109(a) requires the states to evaluate, monitor, and report on all access and visitation programs. We believe that the State of Texas exercises considerable discretion in the funding process, including establishing program guidelines, evaluating the benefitting organizations, ensuring compliance, and administering the collection and distribution of public funding. Further, the service provided by the Center through the Program appears to be one "traditionally provided by governmental bodies." See *Kneeland* at 228. When exercising its authority under the Program, the Center is a governmental body for the purposes of the Act. Consequently, our determination here is limited to the Center in its administration of the Program.¹

Because we find that the Center is a governmental body, for purposes of this request regarding this program, subject to the requirements of Government Code chapter 552, we must examine whether you may withhold the requested information. Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general and state the exceptions that apply within ten business days of receiving a request for information. In this instance, you have failed to meet your obligations under section 552.301, requiring you to timely seek an attorney general decision regarding the release of requested information. The Center received the requestor's written request for information on September 26, 1998. You did not request a decision from this office until January 25, 2000, more than ten business days after the requestor made his request. When a governmental body fails to request a decision and state the exceptions that apply within ten business days of receiving a request for information, the information at issue is presumed public and must be released. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Gov't Code § 552.302. Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because you assert that the requested information is confidential pursuant to section 231.108 of the Family Code, we will consider your arguments for withholding the requested information.

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. Chapter 231 of the

¹The issue was not presented, and we do not reach, whether VAC is a governmental body for all purposes. The requestor seeks records maintained under the Program, a portion of one of VAC's four divisions. Our analysis here hinges on the Program's funding and its relationship to the state. We do not reach the question of whether the Center is a governmental body for the purposes of its other divisions. Thus, if the Center receives a future request for information, you should seek an Attorney General decision at that time and raise your arguments against disclosure for the requested information.

Family Code pertains to the administration of Title IV-D child support programs. Chapter 231 contains the following provision:

Sec. 231.108. CONFIDENTIALITY OF RECORDS AND PRIVILEGED COMMUNICATIONS

(a) . . . all files and records of services provided under this chapter, including information concerning a custodial parent, noncustodial parent, child, and an alleged or presumed father, are confidential.

Section 231.108 of the Family Code designates the office of the attorney general as the state's Title IV-D agency. The Center operates under contract with the Office of the Attorney General to handle Title IV-D related visitation matters and is performing a Title IV-D government agency service when administering the Program. Chapter 231 of the Family Code governs Title IV-D information in possession of state governmental bodies. Because the federal grant funding the Program is provided for the furtherance of Title IV-D program administration, the records associated with the Program's administration are subject to chapter 231. In this instance, the requestor seeks information contained in a file or record of services administered by the Program. We conclude that most of the submitted information is confidential under section 231.108 of the Family Code and that the Center has provided a compelling reason to withhold this requested information.

We have carefully reviewed the submitted information and conclude that the majority of the information consists of records subject to section 231.108 of the Family Code, with one exception. You must withhold the information submitted at Exhibits 1 through 6, and 8 through 12. Exhibit 7, however, primarily consists of the request for information and related responses. These are not documents related to the administration of the Program's services and are not protected by section 231.108 of the Family Code. One document in Exhibit 7 must be withheld pursuant to section 231.108 of the Family Code, and that is a letter dated October 5, 1998. With the exception of that letter, Exhibit 7 must be released.

In summary, the Center is a governmental body for the purposes of the Act when administering the Program. Chapter 231 of the Family Code applies to the records, documents, and correspondence in the possession of the Center that are associated with the administration of the Program's services. The Center must release the records contained in Exhibit 7 with the exception of the October 5 correspondence; the remainder of the requested information must be withheld pursuant to section 231.108 of the Family Code.

Because we make a determination under section 231.108 of the Family Code, we need not consider your additional arguments. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

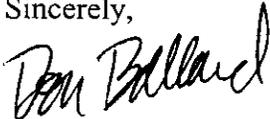
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Don Ballard
Assistant Attorney General
Deputy Chief, Open Records Division

JDB/CHS/ljp

Ref: ID# 133463

Encl. Submitted documents

cc: Mr. John A. Mills
1210 Heights Boulevard, Apt. No. 1
Houston, Texas 77008
(w/o enclosures)