



October 2, 2000

Mr. Roger Lee  
General Counsel for United Regional  
Health Care System  
Law Offices of Roger Lee  
Union Square Building, Suite 204  
1401 Holliday Street  
Wichita Falls, Texas 76301

OR2000-3779

Dear Mr. Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID#141185.

The United Regional Health Care System ("URHCS") received a request for records related to a specific individual treated at URHCS. Specifically, the requestor seeks:

- 1) all information that identifies a specific individual treated at URHCS;
- 2) any minutes, notes or tapes of Ethics Committee meetings of February 19 through February 23, 2000, including administrative notes; and,
- 3) a letter sent to the emergency room of URHCS by Doctors Arti Patel and Robert McBroom.

You claim first that URHCS 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 made confidential under §160.007, Occup. Code and §161.032, Health & Safety Code.<sup>1</sup> We have considered the arguments you urge and reviewed the submitted information.

You advise us that the hospital facility that is the subject of this request was until 1985 a facility operated as a city-county hospital in Wichita County; and that in 1985, this facility was leased to a Texas non-profit corporation known as Wichita General Services Corporation. You indicate that in 1997, Wichita General Services Commission merged with

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<sup>1</sup> These provisions make confidential the proceedings and records of a medical peer review committee.

another non-profit corporation, Bethania Regional Health Care Center. You also indicate that in 1997, these two non-profit corporations were dissolved – and from this dissolution, URHCS, a non-profit corporation, was created. Lastly, you indicate that URHCS maintains a lease agreement with Wichita County-City of Wichita Falls for the subject hospital facility – but does not specifically contract with the County or City to provide medical services. Rather, you advise us that URHCS is reimbursed by the County on a case-by-case basis for indigent care URHCS provides (as a designated provider) under authority of Chapter 61, Health & Safety Code.

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).

The following decisions found certain private entities to be governmental bodies under section 552.003(a)(10) or its statutory predecessor: Attorney General Opinion JM-821 (1987) (volunteer fire department receiving general support from fire prevention district); Open Records Decision Nos. 621 (1993) (Arlington Chamber of Commerce and Arlington Economic Development Foundation, through which chamber of commerce receives support of public funds); 602 (1992) (portion of the Dallas Museum of Art that is supported by public funds); 273 (1981) (search advisory committee that was established by board of regents to recommend candidates for university presidency and that expended public funds); and 228 (1979) (private, nonprofit corporation, with purpose of promoting the interests of the area, that received general support from city). Alternatively, the following decisions found other private entities not to be governmental bodies under the statutory predecessor to section 552.003(a)(10): Open Records Decision Nos. 602 (1992) (portion of the Dallas Museum of Art not supported by public funds, in particular, a specific privately donated art collection); and 569 (1990) (Fiesta San Antonio Commission, which leases facilities from city and receives permits and licenses to use public streets for parades and other events).

These 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 us 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.”*

We have reviewed the documents you have submitted, which include URHCS’ Master Agreement with the Wichita County-City of Wichita Falls, Texas Hospital Board; amended and restated articles of corporation; related merger information; and a letter from Phillip Caron, Chief Financial Officer of URHCS. After reviewing these documents, including the assertions in the submitted letter of Phillip Caron, Chief Financial Officer of URHCS, we conclude that while URHCS does receive public funds, it does so in exchange for services as would be expected in a typical arms-length vendor/purchaser relationship in which URHCS provides a measurable amount of services in exchange for specific monetary reimbursements. Therefore, we conclude that URHCS is not a governmental body for purposes of the Act. Because we find that URHCS is not a governmental body subject to the requirements of the Act, we do not reach your arguments concerning the confidentiality of the requested records.

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;

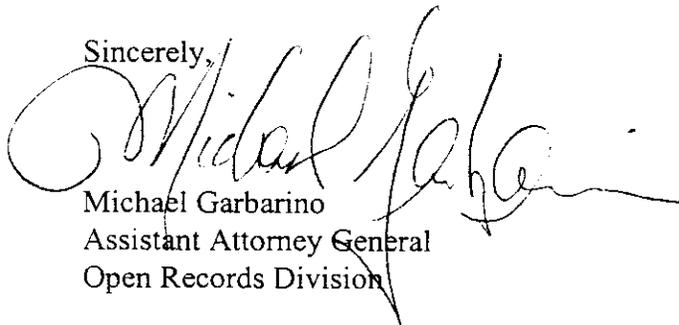
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,

A handwritten signature in black ink, appearing to read "Michael Garbarino", is written over the typed name and title.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/dkb/pr

Ref: ID# 141185

Encl. Submitted documents

cc: Ms. Leona Hancock  
2554 Shepherds Glen  
Wichita Falls, Texas 76308  
(w/o enclosures)