Office of the Attorney General • State of Texas
John Cornyn

February 16, 2001

Ms. Tyra Jones McCollum
Board of Directors, Member at Large
Crime Victim Alliance, Inc.
301 Jackson Street
Richmond, Texas 77469

OR2001-0606

Dear Ms. McCollum:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143870.

Crime Victim Alliance, Inc. ("CVA") received a request for nine enumerated categories of information and the documents by which CVA employees requested non-disclosure of personal information under section 552.024 of the Government Code. You have provided a sample of the responsive information to this office for review.[1] You claim that CVA is not a "governmental body," and therefore is not subject to the disclosure requirements of chapter 552 of the Government Code. The requestor provided comment to this office, arguing that CVA is a "governmental body" by nature of its relationship with Fort Bend County (the "county"), and that CVA failed to comply with the notice requirements of Government Code section 552.301.[2] We have considered the comments of the requestor and those of CVA, and have reviewed the submitted information. *See* Gov't Code § 552.304 (permitting any person to submit to attorney general reasons why requested information should or should not be released).

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[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

[2]Failure to comply with section 552.301 of the Government Code results in the presumption that responsive information must be released. Gov't Code § 552.302. As this decision finds that responsive information must be released on other grounds, the requestor's argument under section 552.301 is not addressed.

The Public Information Act (the "Act") requires "governmental bodies" to make public, with certain exceptions, information in their possession. The Act's definition of "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"is defined in the Act as "funds of the state or of a governmental subdivision of the state." Gov't Code § 552.003(5). CVA asserts that it is not a governmental body because it "does not receive 'public funds' as defined by section 552.003(5) of the Government Code."

CVA relies on *A.H. Belo Corporation v. Southern Methodist University*, 734 S.W.2d 720, 723 (Tex. App. - Dallas 1987, writ denied) in support of its contention that it is not a governmental body because it does not receive or expend "public funds." In *Belo*, the court held that the athletic department of a private university was not a governmental body by virtue of its receipt of funds generated by ticket sales and distributed from the Southwest Conference ("SWC"). *Id.* The *Belo* court found that the funds generated by the SWC schools' athletic departments were subject to a pre-determined disbursement formula under the terms of contracts and the by-laws of the SWC. That ruling held that the subject funds never "vested" in a governmental body, and that SWC merely served as a conduit for the funds when it distributed the funds to the schools. Hence, the private university did not receive "public funds" for purposes of the Public Information Act. *Id* at 723. In contrast, this office found that because of the manner in which certain federal funds were disbursed by the state to county private industry councils, and the oversight exercised by the state in administering certain programs, that funding was "public," and the councils were therefore governmental bodies for purposes of the Act. Open Records Decision No. 509 (1988). Thus, unlike *Belo*, the state's oversight of the federal funds shows that the state was not just funneling the funds to the councils. The degree of control that a governmental body exercises over funds, therefore, determines the "public" status of those funds. Therefore, the first issue which we must address is the degree of control that the county exercised over the funds that it disbursed to CVA.

These funds were raised through the "Fort Bend County District Attorney's Office Annual 5K Fun Run." CVA informs us that the funds raised by this event are "given to the County" and are "held by the County and later distributed to CVA in return for providing services" under the terms of a contract entered into between CVA and the county. CVA does not indicate that the county was obliged, at the time that it took possession of the funds, to distribute all or any part of the funds to CVA. This contract provides (quoted here with emphasis added): "CVA shall exercise discretion as to the expenditure of the money paid to it by the county [and that] such discretion shall be *within guidelines approved by the county*." We conclude from the comments provided and our review of the submitted materials, that the county is not acting as just a conduit of the funds. Rather, the county exercises sufficient control over the subject funds, both before and after execution of the contract, to make these funds "public funds" for purposes of the Act.

We next turn to the question of whether CVA is a "governmental body" because of its receipt of these public funds. 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 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 Office of the Attorney General 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).

Id.

As the *Kneeland* court noted, this office distinguishes 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 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. 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.* (Emphasis added.) Accordingly, we found the commission to be a governmental body for purposes of the Act. *Id.*

Therefore, the issue is whether the public funds received by CVA from the county were for the general support of CVA or were payment for the performance of specific contractual duties. The duties specified in the contract between the county and CVA include performance of three general classes of services and "[o]ther programs which in CVA's

discretion are appropriate to the needs of victims in Fort Bend County." We construe this contract to provide general support to CVA, rather than to provide for payment for "a measurable amount of service."

We note, however, that an organization is not necessarily a "governmental body" in its entirety. "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" is a governmental body. Gov't Code § 552.003(1)(x) (emphasis added); *see also* Open Records Decision No. 602 (1992) (only the records of those portions of the Dallas Museum of Art that were directly supported by public funds are subject to the Act). To the extent that CVA received the county's support, it is a governmental body subject to the Act. Accordingly, records relating to those parts of CVA's operation that are directly supported by these funds are subject to the disclosure requirements of the Act.

CVA has raised no exception to disclosure of the requested information. Therefore, responsive records of the part, section, or portion of CVA that spends or that is supported by funds received from the county must be released. *See* Gov't Code § 552.006. We caution you, however, that release of confidential information is a criminal offense. Gov't Code §552.352; *see also* Gov't Code § 552.117 (governmental body must withhold home address, telephone number, social security number and family member information of employees who elect non-disclosure of this information under section 552.024 prior to receipt of request for information).

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

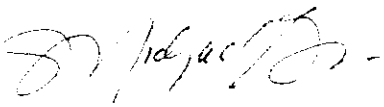
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 Department 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 Hadassah Schloss at 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 143870

Encl: Submitted documents

cc: Mr. Gary W. Gates, Jr.
2205 Avenue I, No. 117
Rosenberg, Texas 77471
(w/o enclosures)