



April 24, 2001

Ms. Janice S. Meyer
Executive Director
Partners Resource Network, Inc.
1090 Longfellow Drive, Suite B
Beaumont, Texas 77706-4889

OR2001-1626

Dear Ms. Meyer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146385.

Partners Research Network, Inc. ("PRN") received two requests for information: 1) "a copy of the original Policy and Procedure Handbook" and "a copy of the Board minutes from December 1999 to Present;" and 2) "[t]he minutes from the PRN Board of Directors meetings from January 1999 to the present, as well as your 990's for the past 3 years." You claim that PRN is not a governmental body and, therefore, is not subject to the Public Information Act (the "Act"). We have considered your argument and reviewed the submitted information.

You inform us that PRN is a private, non-profit agency, incorporated in the state of Texas in 1986. You explain that PRN's primary source of revenue is a grant from the U.S. Department of Education for a program called the PATH Project. You have submitted a copy of several grant award notifications for our review. From those documents, it appears that the grants were made to PRN under the authority of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.*

Under the Public Information Act, 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). Although PRN appears to have been funded solely through a federal grant, that does not *per se* mean that the funds are not "public funds." In Open Records Decision No. 509 (1988), this office concluded that a private, non-profit 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 that 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. Also, in Open Records Decision No. 563 (1990), we held that “[f]ederal funds deposited in the state treasury become state funds.” *Id.* at 5 (citing Attorney General Opinions JM-118 (1983), C-530 (1965)).

Here, we are concerned with grants made under the Individuals with Disabilities Education Act (“IDEA”). Before it was repealed in July 1, 1998, this federal statute authorized the Secretary of Education to make grants to private non-profit organizations

for the purpose of conducting studies, analyses, synthesis, and investigations for improving program management, administration, delivery, and effectiveness necessary to provide full educational opportunities and early interventions for all children with disabilities from birth through age 21.

20 U.S.C. § 1418(c), *repealed by* Pub. L. No. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 101. Unlike the Job Training Partnership Act, grants made by the federal government under IDEA did not pass through the state treasury but went directly to private non-profit organizations. Since PRN received only direct federal grants, it did not receive any “public funds” for purposes of the Texas Public Information Act. *See* Gov’t Code § 552.003(5). Therefore, we conclude that PRN is not a “governmental body” under the Act and need not comply with its disclosure provisions.¹ *See* Gov’t Code § 552.003(1)(A)(x).

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.

¹We note, however, that, with certain limited exceptions, all records, books, and annual reports of non-profit corporations established under the Texas Non-Profit Corporation Act, Article 1396-2.23A(c), V.T.C.S., must be kept at the registered office or principle office of the corporation for at least three years and must be made available to the public for inspection and copying.

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,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 146385

Encl. Submitted documents

cc: Ms. Rana Anderson
4002 Midland Avenue
Snyder, Texas 79549
(w/o enclosures)

Ms. Sanh Ann Moss
8115 Shaffer Drive
Beaumont, Texas 77705