



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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January 13, 2003

Linda Lininger
Community Development Law Center
700 SW Taylor Street, Suite 310
Portland, OR 97205

Michael Dolan
4909 NE 14th Place
Portland, OR 97211

Re: Petition of Michael Dolan received January 2, 2003, to disclose certain records of the Albina Community Development Corporation.

Dear Ms. Lininger and Mr. Dolan,

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Michael Dolan requests the District Attorney to order the Albina Community Development Corporation (Albina CDC) to produce the following records:

[I]ts most recent financial audit and its list of board members.

In a September 19, 2002 letter to Shelley Earley, Executive Director of the Albina CDC, petitioner requested a copy of a public audit and the names of the board members. On December 23, 2002, petitioner wrote this office and noted that he made repeated telephone calls to Ms. Earley in November requesting the information. In December, petitioner spoke with her assistant and again asked for a written response to the requests. Upon receiving no response, petitioner submitted his petition to this office.

The Community Development Law Center (CDLC) responded to the petition in a letter from staff attorney Ann Lininger dated January 6, 2003. Charlie Harris, another staff attorney, sent a follow up letter together with the annual tax return of the Albina CDC, a document required to be available to the public by the IRS. The tax return will be provided to petitioner by CDLC and we will include both letter responses with this order.

Both CDLC attorneys take the position that the Albina CDC is not a public body, nor is it the functional equivalent of one. As such, "it is not subject to the disclosure requirements of ORS 192.410 et seq." Petitioner argues in his petition that "[w]hile this entity is technically a corporation, it is clearly a **functional equivalent** of a governmental agency."

DISCUSSION

ORS 192.410(3) defines "public body" to include:

every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

The Attorney General has long taken the position that "[o]n its face, the Public Records Law does not apply to private entities or to private bodies such as nonprofit corporations and cooperatives." Attorney General's Public Records Manual, 2001, p. 3. Petitioner does not disagree with this conclusion but cites the 1994 Oregon Supreme Court decision of Marks v. McKenzie High Schl. Fact-Finding Team, 319 Or 451, 463-4 (1994), which made the Public Records Law applicable to the "functional equivalent" of a public body. Six factors were found to be relevant to a determination whether a private entity is the functional equivalent of a public body:

1. The entity's origin (e.g., whether the entity was created by government or had some origin independent of government).
2. The nature of the function assigned and performed by the entity (e.g., whether that function is one traditionally associated with government or is one commonly performed by private entities).
3. The scope of the authority granted to and exercised by the entity (e.g., does the entity have the authority to make binding governmental decisions, or is it limited to making nonbinding recommendations).
4. The nature and level of government financial involvement with the entity. (Financial support may include payment of the entity's members or fees as well as provision of facilities, supplies, and other nonmonetary support.)
5. The nature and scope of government control over the entity's operation.
6. The status of the entity's officers and employees (e.g., whether the officers and employees are government officials or government employees).

Petitioner makes the following contentions: the Portland Bureau of Housing and Community Development created Albina CDC in 2001. The Bureau funnels funds through the organization. The decisions of the Albina CDC are bureau decisions. It is almost totally dependent on city, state, and federal funds. Albina CDC is a direct agent of the city. City representatives hired

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the Executive Director before the board was created and the Housing Bureau selected the original board officers.

CDLC staff attorney Lininger replies that Albina CDC is a private non-profit, public corporation. Private individuals founded the Corporation, originally known as Franciscan Enterprises of Oregon, in 1987. It changed its name in 2001 and merged with another non-profit corporation in 2002. Its purpose was to "work and educate for low income housing and for new cooperative economic reforms." Albina CDC has no governmental power and is a governmental grant recipient. A substantial portion of the corporation's budget has been provided by a grant from a major private foundation. The government does not control Albina CDC's operations. Some board members have jobs with various government agencies, but none work for the Portland Bureau of Housing and Community Development. The private individuals who serve on the corporation's board run Albina CDC.

Petitioner has submitted various documents in support of his position. We have carefully reviewed these materials and conclude that few if any of the factors have been sufficiently established to show that Albina CDC is the functional equivalent of a public body.

ORDER

Accordingly, it is ordered that the petition of Michael Dolan to disclose certain records of the Albina Community Development Corporation is denied.

Very truly yours,



MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

03-01