



CASE REPORT

PUBLIC DISCLOSURE ACT - APPLICABILITY TO PRIVATE ASSOCIATION OPERATING COMMUNITY CENTER - TEST. Records of a private, non-profit association operating a community center owned by a city were not subject to the requirements of the Public Disclosure Act because the association was not a functional equivalent of a public agency. **Spokane Research & Defense Fund v. West Central Community Development Ass'n., ___ Wn.App. ___, June 22, 2006 (Wn.App. Div. III).**

I. Facts. The City of Spokane constructed a community center on park property and the West Central Community Development Association (“Association”) was subsequently incorporated as a non-profit corporation to operate the center. The Association leases the building from the City and provides community programs and social services. The City has no involvement in the day-to-day operations of the Association, but does occasionally contract with the Association, as an independent contractor, for community services. The Spokane Research & Defense Fund (SRDF) unsuccessfully sought records from the Association under the Public Disclosure Act (PDA). SRDF then filed an action against the Association and City, alleging a PDA violation, arguing the Association was the functional equivalent of a government agency subject to the PDA under Telford v. Thurston County Board of Commissioners, 95 Wn.App. 149 (1999). The trial court dismissed the complaint on summary judgment ruling that the Association was not the functional equivalent of a government agency. SRDF appealed.

II. Applicable Law and Analysis. On appeal, SRDF contended that the Association was a public agency because it was located on park property and because it was the functional equivalent of a public agency under the Telford analysis. Division III of the Court of Appeals held that a tenant located in a publicly-owned structure on public land does not automatically become a public agency and, after applying the Telford analysis, further held that the Association was not a functional equivalent of a government agency.

The Telford analysis involves a four-factor balancing test where the court considers (i) the function of the entity in question; (ii) whether the entity is funded by the government; (iii) whether the entity is controlled by the government; and (iv) the origin of the entity. Under the first factor the court stated that providing community services is not the exclusive domain of the government. The court also stated that the Association did not make policy, legislate, or execute or regulate law. Under the second factor, the court stated that receipt of federal grants does not trigger the Freedom of Information Act requirements and found that the source of the funds did not justify application of the PDA. Under the third factor--governmental control--the court stated that the City was not involved in the Association operations and that the Association served as an independent contractor. Finally, the court found that while a City ordinance set in motion the events leading to the Association’s incorporation, it was clear that the City intended the Association to administer the community center’s programs independently from its inception.

III. Conclusion. Keep in mind that this case is fact specific, and that courts will apply the Telford functional equivalent test on a case-by-case basis to determine whether records of private entity are nonetheless subject to the Public Disclosure Act. If you have any questions, please contact your city attorney.