GOVERNANCE

Record Requests: What Do You Share?

By Bob Harris, CAE

In April the NFL announced it will end its 501(c)(6) exempt status, preferring to pay taxes on income. Commissioner Roger Goodell said it had become a “distraction.”

The distraction may have come from questions about the annual, Information Return or Form 990. Much can be gleaned from Form 990, including a roster of board members, program income, salaries, conflicts of interests and assets.

Associations are also 501(c)(6) organizations or “business leagues.” Many have affiliations with 501(c)(3) foundations. An exemption from paying federal income tax has significant benefit, allowing organizations to direct more resources to member programs and services.

DISTRACTION

There are only a few public records associations. Most organizations are private corporations, registered with the state as a not-for-profit entity. Since 1997, the IRS has prescribed that the public has a right to request certain documents.

Upon request, exempt organizations must make available for public inspection Form 990 for the past three years. Also public are the IRS application for exemption and the resulting letter of determination.

Copies must be provided immediately in the case of in-person requests (or by the close of business on that day) and within 30 days in the case of written requests. Reasonable copying fees and postage may be charged.

Associations should have procedures so staff members know of the IRS requirements. A simple method is creation of notebook or virtual folder in a shared drive or on a service like Dropbox, labeled “IRS Public Records.” The file should include PDF copies of the Form 990 for three years, the application and letter of determination.

An alternative and acceptable response to providing copies is to make the documents widely available by posting them on the Internet. They can be posted on the association’s website or made available at a site such as Guidestar.org. However, many sites only include Form 990 and not other IRS public records.

Failure to provide the documents may be subject to a penalty of $20 per day for as long as the failure continues, up to $10,000.

CONFUSION

Volunteers may be uncertain about public records. Some directors would give all documents away (minutes, financials, member lists) because they mistakenly think the concept of public records applies to all documents in nonprofits.

Boards sometimes think the “Freedom of Information Act” (FOIA) applies to associations. FOIA is a process for the public to request information from the federal government. State and local governments have similar laws often referenced as government in the sunshine, open records or open meeting laws.

Few associations have an official link to government thus public record requests do not apply.

Through an orientation, directors should be informed that they may be asked for association records. They need to know what is not public to maintain the confidentiality expected of directors.

TRANSPARENCY

Most membership organizations desire to be transparent. The principle is often documented as a value promoting transparency or a policy describing the process for compliance.

The policy might read: “The association promotes transparency and maintains full compliance with state and federal laws. Members who desire to review more than the requisite public documents may make their request in writing identifying the purpose of the request. A member staff member or an officer of the board will facilitate the request to the best of their ability, recognizing that some documents may have confidential information such as contracts, grievances or personnel matters.”

Be sure board and staff understand association public record requirements (and expectations).

Bob Harris, CAE, provides association governance and management tips and templates at www.nonprofitcenter.com.

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