



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

November 8, 1989

Mr. David Cox
Executive Director
State Firemen's and Fire Marshals'
Association of Texas
P.O. Box 13326
Austin, Texas 78711

Dear Mr. Cox:

This will acknowledge receipt of your letter of October 11, 1989. Your letter has been assigned ID# 7879. This decision is OR89-360.

Under the Texas Open Records Act, article 6252-17a, V.T.C.S., all information held by governmental bodies, as defined in the act, is public unless one of the act's specific exceptions protects the information. Attorney General Opinion JM-672 (1987). The act's definition of "governmental body" includes:

the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof.

V.T.C.S. art. 6252-17a, § 2(1)(F).

If the State Firemen's and Fire Marshals' Association of Texas is supported in part or whole by or expends public funds and it receives a request for information, it must request a decision from the attorney general in compliance with section 7(a) of the act. This office has the authority to determine whether an entity falls within section 2(1)(F).

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See Kneeland v. National Collegiate Athletic Ass'n, 850 F.2d 224 (5th Cir. 1988), cert. denied, 109 S. Ct. 868 (1989).

You state that the association is a non-profit corporation funded by membership dues. You note that the association's members include "private" volunteer fire departments and fire departments funded by political subdivisions. These entities may constitute governmental bodies under Section 2(1)(F) of the Open Records Act. See, e.g., Attorney General Opinion JM-821 (1987) (copy enclosed).

This does not mean, however, that the association is subject to the act. See generally Open Records Decision No. 510 (1988). As a general rule, open records requests for information about the expenditure by the association of public funds received from members that are governmental bodies should be directed to the members. If one of the member entities is subject to the act, information about its expenditures and services performed by the association in return for those expenditures would be public. See V.T.C.S. art. 6252-17a, § 6(3); cf. id. § 3(a) (information held on behalf of governmental body is subject to act)

Our preliminary determination is that the association is not subject to the Open Records Act. To determine conclusively whether the association is supported in whole or part by public funds, we must review information about the manner of funding by and the services provided to members that are subject to the Open Records Act. Please provide this information within 10 days of receipt of this decision.

The Texas State Association of Firefighters sought copies of the financial statements, records of dues collected, and a current membership list of the State Firemen's and Fire Marshals' Association. You state that your association is a non-profit corporation organized under Texas law. In this regard, please note that the Non-Profit Corporation Act, article 1396-2.23, V.T.C.S., expressly grants members of the corporation the right to review its records. Article 1396-2.23A(c) expressly grants the public a right to inspect the financial records and annual reports of a non-profit corporation. That provision governs the first item requested.

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If you have questions about this letter, please refer to OR89-360.

Yours very truly,

*Open Government Section
of the Opinion Committee* JSR
Jennifer S. Riggs
Chief, Open Government Section
of the Opinion Committee

JSR/le

Ref.: ID# 7879

Enclosures: ORD-510
JM-821
OR88-251

cc: Texas State Association of Firefighters
1106 Lavaca, Suite 101
Austin, Texas 78701