



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 25, 1996

Mr. Charles Dunn
Dunn & Walker
P.O. Box 311
Lubbock, Texas 79408-0311

OR96-0079

Dear Mr. Dunn:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 22695.

The Buffalo Springs Lake Volunteer Fire Department (the "department"), which you represent, received an open records request for "a copy of the financial reports of the [department] for all of the year 1992, and for January, 1993, through the present date." You do not contend that the requested information falls within one of the exceptions from disclosure listed in Subchapter C of the Government Code. Rather, you contend that the department, which you describe as a private non-profit corporation¹, need not release the requested records because it is not a "governmental body" as defined in section 552.003 of the Government Code.

Under the Open Records Act, all information, with certain exceptions, that is collected, assembled, or maintained by a "governmental body" is subject to required public disclosure. See Gov't Code § 552.002(a). Section 552.003(1)(A)(x) includes within the definition of governmental body "the part, section, or portion of an organization, *corporation*, commission, committee, institution, or agency that spends or that is supported in

¹We do not address here whether the department must release the requested financial records pursuant to the Texas Non-Profit Corporation Act, V.T.C.S. art. 1396. Article 1396-2.23A(C) provides that, with certain exceptions, all records, books, and annual reports of non-profit corporations established under that article must be kept at the registered office or principal office of the corporation for at least three years and must be made available to the public for inspection and copying.

whole or in part by public funds.” (Emphasis added.) The receipt of public funds for the general support of the activities of a private organization brings that organization within the definition of a “governmental body” unless the public funds are paid in exchange for a measurable amount of service as would be expected in a typical arms-length transaction. Open Records Decision No. 228 (1979). *See also* Attorney General Opinion JM-821 (1987).

You have submitted to this office for review a copy of the contract between the department and the Lubbock County Water Control and Improvement District Number One (the “district”) that establishes the manner in which the department receives funds from the district. In summary, the contract provides that in exchange for the department’s furnishing fire protection for all of the district’s properties in the boundaries of Buffalo Springs Lake, the district will provide the department with, among other things, the following:

a 99 year lease of property to be used as a fire station, at a rate of \$1.00 per year;

\$300 per month (for no specified purpose);

free water, sewer, and garbage service for the term of the lease; and

\$1.00 per month for each water meter customer within Buffalo Springs Lake, for a period of five years.

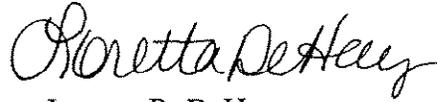
You characterize the lease as “a classic ‘arms-length’ transaction between a public entity and a private non-profit corporation.” We disagree. Regardless of the number of fires to which the department responds in any given time period, the department will nevertheless receive from the district the same amount of financial support. We therefore find that the contract between the department and the district is not one involving the exchange of public funds for a “measurable amount of service,” but rather one providing for the department’s general support through the receipt of public funds.

Consequently, we conclude that the department is a “governmental body” as defined in section 552.003(1)(A)(x) of the Government Code. Further, because you have not argued that the requested information comes within any of the exceptions listed in Subchapter C of the Government Code, the department must release the requested financial records in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/ch

Ref.: ID# 22695

Enclosures: Submitted documents

cc: Ms. Marilyn Royal
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(w/o enclosures)