



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 13, 1996

Mr. Michael D. Moore
Cantey & Hanger, L.L.P.
2100 Burnett Plaza
801 Cherry Street
Fort Worth, Texas 76102

OR96-2401

Dear Mr. Moore:

In Open Records Letter No. 96-1133 (1996), this office determined that the Santo Water Supply Corporation ("SWSC") was not a governmental body subject to the Open Records Act (the "act"), Government Code chapter 552. Among other things, that decision was based on the premise that SWSC is not subject to Government Code section 552.003, which lists various entities that are to be considered a governmental body for purposes of the act. The list of entities includes a "governing body of a nonprofit corporation organized under chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides a water supply or wastewater service, or both and is exempt from ad valorem taxation under Tax Code section 11.30." Gov't Code § 552.003(1)(A)(ix.). Tax Code section 11.30 reads as follows:

A corporation organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434A, Vernon's Texas Civil Statutes), that provides in the bylaws of the corporation that on dissolution of the corporation the assets of the corporation remaining after discharge of the corporation's indebtedness shall be transferred to an entity that provides a water supply or wastewater service, or both, that is exempt from ad valorem taxation is entitled to an exemption from taxation of property that the corporation owns and that is reasonably necessary for and used in the operation of the corporation:

...

Since issuance of Open Records Letter No. 96-1133 (1996), you have provided this office a copy of the SWSC bylaws. These bylaws state that upon discontinuance of SWSC by dissolution or otherwise, all remaining assets shall be distributed among the members and

former members and that all such assets transferred to a member "shall be in turn immediately transferred by the individual member to an entity that provides water supply or wastewater service or both, that is exempt from ad valorem taxation." See Bylaws Santo Water Supply Corporation Article XV (adopted January 27, 1992). These bylaws appear to support the conclusion that the SWSC is within section 552.003(1)(A)(ix). See Tax Code § 11.30. Given this conclusion, we now clarify that the SWSC is subject to the act.

We next address your objection to the release of information you describe as "the private diary kept and maintained by the Manager of SWSC."¹ You ask whether this "diary" is public information subject to the act.

Section 552.002(a) of the Government Code provides as follows:

In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

You state:

SWSC does not own the information kept and maintained in the Manager's diary, and there is no policy, procedure or job description of SWSC which provides SWSC with a right of access to the Manager's personal diary. Further, SWSC did not instruct the Manager to keep such a diary. The information does, however, reflect the daily activities of the Manager in connection with his job duties.

The mere fact that requested records are in the possession of one person, or that a governmental body has no particular policy or procedure that grants the governmental body an affirmative right of access to the information, does not necessarily mean that the information is not within the act's definition of "public information." See Open Records

¹We note that SWSC apparently has received several open records requests for additional information from the requestor. As you have raised no exception to the release of the requested information, it is presumed to be public. Gov't Code § 552.302; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). When an exception to disclosure that is designed to protect the interests of a third party is applicable, or when requested information is deemed confidential by law, the presumption of openness may be overcome. See Open Records Decision No. 552. (1990). As you have not asked us to do so, we cannot rule on the public disclosure of this information.

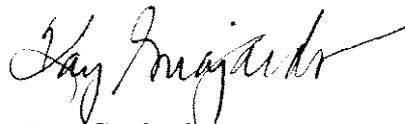
Decision No. 635 (1995) at 3-4. Nor is information removed from the definition simply because the governmental body did not specifically instruct the employee to create the information. Thus, we do not believe your assertions about the creation or possession of the diaries resolves the question before us.

This office resolves questions of whether records are maintained "in connection with the transaction of official business," therefore subject to the act, or are personal writings belonging to the individuals in their capacity as private persons, by considering numerous factors. *See id.* For example, this office concluded that the calendar of a Railroad Commission employee was subject to the act based on the fact that state resources were used to maintain the calendar, the calendar was maintained by another public employee as part of his or her job, the calendar was accessible to another commission employee, and a significant number of commission-related entries were recorded in the calendar. *See id.* In contrast, a calendar purchased and maintained by a commission employee who had sole access to it was not subject to the act. *See id.* However, Open Records Decision No 635 (1995) determined that information maintained on a privately-owned medium that is actually used "in connection with the transaction of official business," such as recording the substance of work-related appointments after they have taken place, is subject to the act. *See id.* at 7.

Turning to the information at hand, we observe that the "diary" appears to be in the nature of a time sheet that records past work-related activities. Additionally, the "diary" contains numerical notations that appear to be calculations of mileage as well as a record of hours of overtime earned. You have provided no information about the use of SWSC resources in regard to the purchase of the "diary" or the amount of time spent at work recording the "diary" entries. Nonetheless, since the "diary" does not appear to contain any entries that do not record past work-related activities, we conclude in this instance that the diary is used "in connection with the transaction of official business." *See id.* Consequently, the "diary" is subject to the act. Gov't Code § 552.002(a). You raise no exception to the required public disclosure of the "diary." We conclude that SWSC may not withhold the requested information from required public disclosure.

We are resolving this matter with this 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 may 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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 102500

Enclosures: Submitted documents

cc: Mrs. Helen M. King
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(w/o enclosures)