



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 30, 1997

Ms. Suzanne Seburn  
Law Offices of Frank L. Mauro  
208 Parking Way  
Lake Jackson, Texas 77566

OR97-0205

Dear Ms. Seburn:

On behalf of the West Columbia Volunteer Fire Department (the "fire department"), you ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 103410.

The fire department received two requests for information.<sup>1</sup> You assert that the fire department is not a governmental body subject to the act. In the alternative, you assert that the requested records labeled as exhibit "A" should not be disclosed because they are the work product of an internal investigation conducted by the fire department's disciplinary committee. You also argue that because the Open Meetings Act makes confidential the agendas and tapes of executive sessions of governmental bodies subject to that act, information revealed during the meetings of an entity not subject to the Open Meetings Act are confidential by law. You also argue that "[p]ublicly divulging the information collected during the internal investigation of the disciplinary committee would create dissension within the membership of the [fire department]."

We begin with your assertion that the fire department is not a governmental body subject to the act. You make this assertion based on the following allegations: the fire department is a volunteer organization incorporated under the Texas Nonprofit Corporation Act, the fire department members receive twelve dollars from the City of West Columbia as a pension, the fire department receives voluntary donations, the fire department purchases

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<sup>1</sup>We note that the submitted information also includes two additional Open Records Act requests for information for which you do not seek our decision.

equipment with these donations, the fire department members are not paid for their services, a City of West Columbia ordinance states that the fire department is not "in any manner a department or branch of the City of West Columbia, nor shall any of its officers or member be considered an officer, agent or employee of the City of West Columbia," and the fire department is not a party to a contract with the City of West Columbia to provide services.

The Open Records Act generally makes public the information of a "governmental body," as that term is defined in the act. Gov't Code § 552.002. Government Code section 552.003 defines "[g]overnmental body" as, among other things, "the part section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds." We have reviewed a copy of a document titled "City of West Columbia Budget Proposal, as of September 16, 1996." This proposal is concerned with city expenditures for the fire department and provides information concerning past budgets, the current budget, the actual budget, the projected balance and the proposed budget. This budget allows for city expenditures for fire department personnel costs, operating supplies, maintenance and repairs, utilities and telephone, "sundry,"<sup>2</sup> and capital outlay.

The primary issue in determining whether private entities are "governmental bodies" under the act is whether they are supported in whole or in part by public funds. Attorney General Opinion JM-821 (1987) at 2 (citing *A.H. Belo Corp. v. Southern Methodist University*, 734 S.W.2d 720, 723 (Tex. App.-Dallas 1987, writ denied). We believe the budget document demonstrates the City of West Columbia "supports" the fire department. *But see* Open Records Decision No. 343 (1982) (where contract required hospital district to make specific payment for specific measurable services of private, non-profit corporation, hospital district did not "support" corporation and such corporation was therefore not "governmental body" subject to act.).

We turn to your arguments for withholding Exhibit A, which you describe as the "work product of an internal investigation conducted by the [fire department's] disciplinary committee." You aver that because the information was discussed in what you say was a closed meeting of the fire department disciplinary committee and because the Open Meetings Act makes confidential the agenda and tape of a closed, executive session of a governmental body subject to that act, an entity not subject to the Open Meetings Act, should be able to keep confidential information it discusses during its closed meetings.

Section 552.101 of the Government Code excepts from required public disclosure information that is deemed confidential by law, including Constitutional, statutory and judicial decision. Even if we agreed that a confidentiality statute applicable to governmental

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<sup>2</sup>"Sundry" contains five separate categories of expenditures: dues and subscription, travel, motor vehicle insurance, building insurance and liability insurance.

entities subject to the Open Meetings Act should by force of logic be applicable to a governmental entity not subject to the Open Meeting Act, no statute makes confidential the information of an entity subject to the Open Meetings Act merely because such information was discussed during a closed session. The fact that a document was discussed in an executive session of a governmental entity subject to the Open Meetings Act does not make that document confidential under the Open Records Act. Open Records Decision No. 484 (1987) at 9-10. Your assertion that the fire department is not subject to the Open Meetings Act--an assertion we need not address here--does not make confidential information a fire department committee discusses in a closed meeting. Nor does the fact that the Open Meetings Act makes confidential a certified agenda or a tape recording of an executive session, *see* Gov't Code § 551.104, mean that information discussed in a closed meeting of a governmental body that is not subject to the Open Meetings Act, is likewise confidential. By its terms, the application of section 551.104 is limited to the certified agenda or tape recording of a governmental body subject to the Open Meetings Act. Moreover, the act does except information from public disclosure because of the possibility that dissension and morale problems among government employees may result from the release of the requested information. *See* Gov't Code §§ 552.101 - .124 (listing statutory exceptions to required public disclosure).

We conclude that the fire department may not withhold Exhibit A from required public disclosure. You raise no exception to the required public disclosure of the information concerning the fire department's donations and financial records; consequently, the fire department may not withhold such information from 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# 103410

Enclosures: Submitted documents

cc: Mr. Charley R. Tindol  
101 South Mattson  
West Columbia, Texas 77486  
(w/o enclosures)

Mr. Phillip VanDerSlice  
Brazosport Facts  
P.O. Box 549  
Clute, Texas 77531  
(w/o enclosures)