



December 11, 2000

Mr. Les Hatch
Attorney for Corporation
Murchison, Hund & Harriger, L.L.P.
4021 84th Street
Lubbock, Texas 79423

OR2000-4641

Dear Mr. Hatch:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 142019.

The Northern High Plains Boll Weevil Eradication Steering Committee, Inc. (the "committee") received a request for the following information:

1. All financial records pertaining to, but not limited to, all monies received and spent during the time the Committee has been in existence;
2. A complete itemized list of contributors names and all donations.

You have submitted for our review information that is responsive to the request. Among other arguments, you contend the committee is not a "governmental body" as defined in section 552.003 of the Act, and that the Act therefore does not require the committee to release to the requestor the information responsive to the request. We have considered your comments and arguments, and we have reviewed the submitted information.

Chapter 552 of the Government Code requires governmental bodies to make public, with certain exceptions, information in their possession. The term "governmental body" includes:

- (i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

...

(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

...

(x) 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[.]

Gov't Code § 552.003(1)(A)(i), (iv), (x). In the situation at hand, you explain that the committee does not meet the definition at subsection 552.003(1)(A)(i) because it "was not created" by the executive or legislative branch of state government and "is not directed by one or more elected or appointed members." As to the definition at subsection 552.003(1)(A)(iv), you represent to this office that the committee is a private non-profit corporation and not "a political subdivision of a county or municipality." We therefore examine whether the committee, a corporation, meets the definition of a governmental body found at subsection 552.003(1)(A)(x), quoted above. We note that public funds as that term is used in subsection 552.003(1)(A)(x) are "funds of the state or a governmental subdivision of the state." Gov't Code § 552.003(5).

Courts, as well as this office, have considered the scope of the Act's definition of "governmental body." In *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the Texas Attorney General do not declare private persons or businesses governmental bodies subject to the Act "simply because [the persons or businesses] provide specific goods or services under a contract with a government body." *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted that the attorney general's opinions generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." Tex. Att'y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that "a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates

an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a 'governmental body.'" Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide "services traditionally provided by governmental bodies."

Id. You state that the committee "is not supported in whole or in part by public funds." The affidavit you have submitted represents that the committee "has never received public funds of any sort and has not spent public funds." Our review of the committee bylaws, as well as the submitted information responsive to the request, indicates the committee is supported by private donations. We thus understand that the committee does not and has not received public funds either for general support or under a "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." In addition, we have no indication that the committee acts as an agent of any public entity, nor that the committee provides a service traditionally provided by any governmental body. Based on the information you have provided and the representations made to this office, we therefore conclude that the committee is not a governmental body as that term is defined in section 552.003 of the Act. Because the committee does not meet the definition of a governmental body, the committee is not subject to the public disclosure requirements of the Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

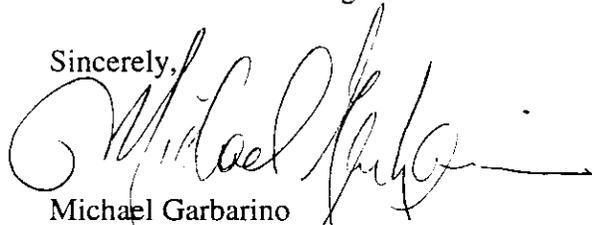
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 142019

Encl. Submitted documents

cc: Mr. Chris Lewellen
c/o Mr. Les Hatch
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(w/o enclosures)