



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 9, 2003

Mr. Russell Downey
Director
Manchaca Emergency Medical Services District
P.O. Box 695
Manchaca, Texas 78652

OR2003-2402

Dear Mr. Downey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179105.

The Manchaca Volunteer Emergency Medical Services District (the "district") received a request for specified invoices and receipts, a settlement statement, and a loan document. You contend that the district is not a governmental body that is required to comply with the Public Information Act (the "Act"). We have considered your arguments. We have also considered comments submitted to this office by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Pursuant to section 552.303(c) of the Government Code, on March 12, 2003, this office sent a notice to you via facsimile requesting that you provide additional information necessary for this office to render a decision. You were required to submit the necessary additional information to this office not later than the seventh calendar day after the date the notice was received. Gov't Code § 552.303(d). As of the date of this letter, we have not received your response. Consequently, we are forced to address your claim and render a decision based on the information we have received to date.

Under the 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)(1). Section 552.003(1)(A)(xii) 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 whole or in part by public funds." 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).

“Whether or not a particular nonprofit volunteer fire department [is subject to the Act] depends on the circumstances in each case, including the terms of the contract between the department and the public entity.” Attorney General Opinion JM-821 at 5 (1987) (citation omitted). Furthermore,

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.” The overall nature of the relationship created by the contract is relevant in determining whether the private entity is so closely associated with the governmental body that the private entity is a governmental body.

Id. at 4 (citation and footnote omitted). In this regard, we note that emergency medical services are “traditionally provided by governmental bodies.” *Id.* at 5; *see also Kneeland v. National Collegiate Athletic Ass’n*, 850 F.2d 224, 228 (5th Cir. 1988), *rev’g* 650 F. Supp. 1047 (W.D. Tex. 1986), *cert. denied*, 488 U.S. 1042 (1989).

The requestor has submitted to this office a copy of the contract between the district and the Travis County Emergency Services District No. 5 (the “TCESD”) that establishes the manner in which the district receives funds from the TCESD. In the contract, the district agrees “to provide First Responder Volunteer EMS service to the citizens residing in the [TCESD’s] legal boundaries.” Furthermore, the contract specifically provides that the district will provide volunteer emergency medical services “to the [TCESD] in accordance with the Travis County First Responder Program” and will continue to provide services “to areas outside the [TCESD] as set forth by the Travis County Commissioners Court and in accordance with the interlocal cooperation agreement with the City of Austin, Austin EMS, and Travis County, and any other agency for mutual aid assistance.” The contract also states that “all equipment and supplies purchased with [TCESD] funds will be the property of [the district] for their use.” Additionally, we note that regardless of the number of emergencies to which the district responds in any given time period, the district will nevertheless receive funds from the TCESD “as available from the [TCESD’s] tax revenues.” Further, we note that the district is required under its contract with the TCESD to provide services that the TCESD would otherwise typically provide to its citizens.

After reviewing the contract, we conclude that the contract does not provide for the exchange of public funds for a “measurable amount of service,” but rather provides for the district’s general support through the receipt of public funds. Thus, the contract between the district and the TCESD is not an “arms-length” transaction between a public entity and

a private non-profit corporation. Consequently, after reviewing the totality of the circumstances, we conclude that the district is a "governmental body" under section 552.003(1)(A)(xii) of the Government Code and therefore is subject to the provisions of the Act.

In regard to the requested information, we note that the district has not sought an open records decision from this office within the ten business day time period, nor provided this office with the required documents within the fifteen business day time period as prescribed by section 552.301. See Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Additionally, pursuant to section 552.303(e) of the Government Code, the information that is responsive to a person's request to a governmental body and regarding which the governmental body fails to comply with section 552.303(d) is presumed to be subject to required public disclosure and must be released unless there exists a compelling reason to withhold the information. We find you have not demonstrated that a compelling reason exists to withhold the information. Further, because you have not submitted the requested information, we have no basis for determining whether it is confidential by law.¹ Therefore, we have no choice but to order the requested information released pursuant to sections 552.302 and 552.303 of the Government Code.

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).

¹ Additionally, we note that the requested information appears to be the type of information that is made expressly public under section 552.022(a)(3) and (18) of the Government Code.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 179105

c: Mr. Chris Barron
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Austin, Texas 78739
(w/o enclosures)