



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2005

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OR2005-10569

Dear Ms. Drew:

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# 236752.

The Magnolia Volunteer Fire Department (the "department"), which you represent, received a request for the "inventory list of all equipment or furniture purchased in 2005 with [department] funds along with [the] value of each item[.]" You inform us that the department does not maintain a 2005 inventory list. We note that the Act does not require a governmental body to disclose information that did not exist at the time that the request was received, nor does the Act require a governmental body to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). However, a governmental body must make a good-faith effort to relate a request to responsive information that it maintains. *See* Open Records Decision No. 561 at 8 (1990). You have submitted documents related to individual expenditures made in 2005 for our review. You ask whether this information is responsive to the instant request. We find that the department has made a good-faith effort to relate this request to responsive information that the department maintains. Accordingly, we will address your arguments against disclosure of the submitted information. You claim that portions of the requested information are not subject to the Act. You also claim that a portion of this information is excepted from disclosure under section 552.136 of the Government Code. We have considered your

arguments and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we address your contention that information related to purchases made by the department with private funds is not public information subject to disclosure under the Act. 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." We also note that 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." Open Records Decision No. 228 (1979).

"Whether or not a particular nonprofit volunteer fire department [is a governmental body 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). In Attorney General Opinion JM-821, this office held that the Cy-Fair Volunteer Fire Department ("Cy-Fair") was a governmental body for purposes of the Act's predecessor to the extent that it was supported by public funds received pursuant to its contract with the Harris County Rural Fire Prevention District No. 9 ("RFPD"). *See id.* In issuing that opinion, this office analyzed the contract between Cy-Fair and RFPD, noting that Cy-Fair received public funds to provide all of RFPD's needed services. *See id.* This office also noted that the contract provided that Cy-Fair must submit one-year operating budgets and a three-year capital expenditure budget to RFPD for approval. Consequently, this office found that the contract provided for the general support of Cy-Fair for purposes of the Act's predecessor. *Id.*

In this instance, you state the department receives its funding from private fundraising and donations, private billing for certain department services, and a contract for services with the Montgomery County Emergency Services District No. 10 (the "ESD"). You have submitted that contract for our review. Under that contract, the department provides "emergency fire control, suppression and extinguishment [sic] services, first responder services and emergency rescue services to and for the benefit of the residents, other individuals and property within [ESD's] territory." The contract also provides that ESD will reimburse the department for specified costs incurred while providing these services. You inform us that all department expenditures and purchases, including those for capital improvements,

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

equipment, and uniforms, are made by the department from any of the department's three general sources of revenue. We also note that under the contract, the department must submit a five-year capital expenditure budget and a one-year operating budget to ESD for approval.

Based on your representations, our review of the contract at issue, and our holding in Attorney General Opinion JM-821, we find that ESD provides general support to the department, making the department a governmental body to the extent it received ESD's financial support. *See id*; *see also* Gov't Code § 552.003(1)(A)(xii). Therefore, any responsive information that is related to purchases made with public funds is "public information" subject to the Act. However, any responsive information that is related to purchases made with private funds is not "public information" and it need not be released to the requestor. You have submitted a check request form, an order form, and two invoices as responsive to this request. You state that these documents are related to department purchases made with public funds. Therefore, we find that the submitted information is "public information" subject to the Act. Accordingly, we will address your remaining argument against disclosure for the submitted information.

You claim that the account numbers located in the submitted information are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). In accordance with section 552.136(b) of the Government Code, the department must withhold the account numbers you have marked in the submitted documents. The remaining information must be released to the requestor.

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, upon receiving this ruling, the governmental body