



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2008

Mr. James A. Hemphill
Graves, Dougherty, Hearon & Moody, P.C.
P.O. Box 98
Austin, Texas 78767

OR2008-05338

Dear Mr. Hemphill:

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# 308402.

St. Edward's University Police Department (the "department") received a request for a specified police report. You assert that the department is not a governmental body subject to the Act. Alternatively, you assert that the information at issue is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the department is not a governmental body as defined by section 552.003 of the Government Code. The Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code. According to that section a "governmental body" is

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)(xii). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975

S.W.2d 353, 360-362 (Tex. App.—Waco 1998, pet. denied). Further, in Attorney General Opinion JM-821 (1987), this office concluded that “the primary issue in determining whether certain private entities are governmental bodies under the [predecessor of] Act is whether they are supported in whole or in part by public funds or whether they expend public funds.” Attorney General Opinion JM-821 at 2 (1987).

You state that the department “neither spends nor is supported in whole or in part by public funds.” Thus, based on this representation, we find that the department is not a governmental body subject to the Act, and therefore, it need not respond to the instant request for its information.¹

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

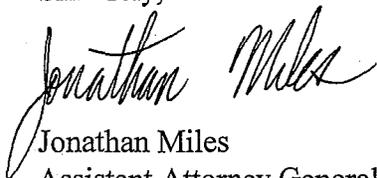
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹Because our ruling is dispositive, we need not address your remaining arguments.

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 Office of the Attorney General 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 308602

Enc. Submitted documents

c: Mr. Robert J. Barrera
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(w/o enclosures)