



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 18, 2012

Mr. Patrick W. Lindner  
For Bandera River Ranch Water Supply Corporation  
Law Offices of Davidson & Troilo, P.C.  
7550 West IH 10, Suite 800  
San Antonio, Texas 78229

OR2012-00840

Dear Mr. Lindner:

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# 442613.

The Bandera River Ranch Water Supply Corporation (the “corporation”), which you represent, received a request for (1) information regarding the components of the existing system; (2) the original utility’s current financial statement; and (3) estimated costs of additional wells, storage, or other facilities and the capacity of each future component. You indicate you have no information responsive to categories one and two of the request.<sup>1</sup> You further indicate you will release some information to the requestor. You claim the corporation is not a governmental body subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

The Act requires a governmental body to make information that is within its possession or control available to the public, with certain statutory exceptions. *See Gov’t Code* §§ 552.002(a), .006, .021. Under the Act, the term “governmental body” includes several enumerated kinds of entities, including “the governing body of a nonprofit corporation

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism’d); Open Records Decision No. 452 at 3 (1986).

organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code[.]” *Id.* § 552.003(1)(A)(ix).

You indicate the corporation was organized under chapter 67 of the Water Code. Pursuant to section 552.303(c) of the Government Code, this office sent a notice to you via facsimile requesting that you provide this office with a copy of the corporation’s bylaws. You provided the bylaws in response to our request. Article VIII of the bylaws states “[t]he [c]orporation shall conduct its business on a non-profit basis[.]” In addition, Article VIII provides “the Directors of the [c]orporation may allocate to sinking fund(s) and reserve accounts such amount of profits as they deem necessary . . . as provided by [s]ection 67.008(d) of the Texas Water Code. Funds allocated by the [board of director’s] . . . shall be invested in accordance with the provisions of [s]ection 67.014(b) of the Texas Water Code.” Thus, we understand the corporation was organized under the authority of chapter 67 of the Water Code. However, you state the corporation does not provide a water supply or wastewater service at this time. You explain the corporation was formed to purchase an existing water system, but the deal has not yet closed. We, therefore, conclude the corporation is not a governmental body under the Act at this time. *See* Gov’t Code § 552.003(1)(A). Thus, the corporation need not comply with this request for information.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

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<sup>2</sup>As our determination is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 442613

Enc. Submitted documents

c: Requestor  
(w/o enclosures)