



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 9, 1994

Mr. Stephen G. Woollen
Project Director
Amistad Area Narcotics Task Force
South Park Plaza, Spur 239
P.O. Box 1212
Del Rio, Texas 78841

OR94-240

Dear Mr. Woollen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25941.

The Amistad Area Narcotics Task Force ("AANTF") received a request for "a complete copy of the cassette recording of the entire Control Board meeting held on April 13, 1994." You contend that the AANTF is not subject to the Open Records Act and, if it is subject to the act, that sections 552.101 and 552.108 of the Government Code permit you to withhold the requested information from required public disclosure.

The Open Record Act's definition of "governmental body," found in section 552.003 of the Government Code, includes the following:

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(a)(10). Public funds are defined as "funds of the state or of a governmental subdivision of the state." *Id.* § 552.003(c). The AANTF is comprised of representatives from several different law enforcement agencies, cities and counties. You explain the AANTF as a "multi-agency, multi-jurisdictional criminal narcotics enforcement unit." You argue that AANTF is not a "governmental body" as defined in the act because "no local funds are used" and "seventy-five percent of the AANTF grant award comes from federal funds."

Whether an entity is a governmental body subject to the act depends on whether it is supported in whole or in part by public funds of the State of Texas. Attorney General Opinion JM-821 (1987); Open Records Decision No. 509 (1988). Federal funds disbursed to the state are often treated as public funds of the state. Open Records Decision No. 509 at 3; *see also* Attorney General Opinion JM-716 (1987). Under the

federal Drug Control and System Improvement Grant Program, the State of Texas administers the grant program that funds the AANTF. See 42 U.S.C. §§ 3751 ("The Director of the Bureau of Justice Assistance is authorized to make grants to States, for the use by States and units of local government in the States."), 3752 (same); 1 T.A.C. §§ 3.811 - .881 (regarding administration of the Narcotics Control Program by the criminal justice division of the office of the governor). Under the applicable federal law, a state is required to apply for financial assistance for administration of the state's program, which in turn makes grants available to units of local government. 42 U.S.C. §§ 3755(a), 3756(b). Thus, the AANTF expends public funds received by the state through the Drug Control and System Improvement Grant Program. Therefore, the AANTF is a governmental body under section 552.003(a)(10) of the Government Code.

You claim that section 552.101 of the Government Code excepts the requested information from required public disclosure. You have not explained, nor is it apparent after listening to the tape recording, how section 552.101 applies to this request for information. We are therefore unable to determine whether 552.101 prohibits public disclosure of the tape recording.¹

We next address your argument that section 552.108 excepts from disclosure the information requested from the AANTF. Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, and prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

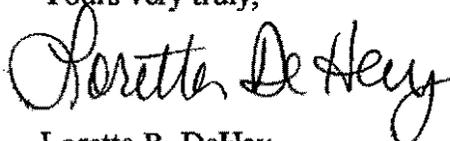
Whether section 552.108 applies to specific information depends on whether its release would "unduly interfere" with law enforcement or prosecution. *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977); Open Records Decision Nos. 518 (1989) at 6; 434 (1986) at 2. The governmental body asserting this exception has the burden of explaining, if the information does not supply the explanation on its face, how the release of the information

¹We note that the requestor is a representative of the City of Del Rio and is acknowledged as a member of the AANTF Control Board in your letter to this office dated April 18, 1994. It is unclear at this time, whether he is presently a member of the board. If the requestor is a member of the AANTF Control Board, he has an inherent right of access to AANTF records. Attorney General Opinion JM-119 (1983). In addition, information may be transferred from one individual to another within a governmental body without losing its confidential status. Attorney General Opinion JM-1235 (1990). On the other hand, if the requestor is not a member of the board but is acting on behalf of the City of Del Rio, you may release information to him without destroying its confidential character. Open Records Decision No. 567 (1990). Moreover, interagency transfer of information is not considered public disclosure. Open Records Decision No. 516 (1989).

would unduly interfere with law enforcement. Open Records Decision No. 518 at 2. In this case, you have not explained how releasing the requested information would unduly interfere with law enforcement. Moreover, after listening to the tape recording, we do not believe that it contains information that, if released, would "unduly interfere" with law enforcement. Therefore, section 552.108 does not permit you to withhold the requested information and you must release it in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/MAR/rho

Enclosure: Submitted tape recording

Ref: ID# 25941

cc: Mr. Carlos E. Martinez
Assistant City Manager
City of Del Rio
P.O. Box 4239
Del Rio, Texas 78841
(w/o enclosures)