



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2006

Mr. Larry A. Baskind
Baskind & Hosford, P.C.
300 East Main, Suite 908
El Paso, Texas 79901-1379

OR2006-10422

Dear Mr. Baskind:

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# 258965.

The Texas Boarder Sheriff's Coalition (the "coalition"), which you represent, received a request for "all monthly reports to the [coalition] from each of the 16 counties participating in Operation Linebacker." You claim that the coalition is not a governmental body subject to the Act. Alternatively, we understand you to claim that the submitted information is not "public information" subject to the Act. Finally, we understand you to claim that a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also considered comments submitted 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).

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 id.* § 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,

¹We assume that the 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.

institution, or agency that spends or that is supported in whole or in part by public funds.” *Id.* § 552.003(1)(A)(xii). 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).

You explain that the coalition is a Texas nonprofit corporation organized in November 2005 by the sheriffs of Texas counties along the international boundary between Texas and the Republic of Mexico. You state that the coalition “is currently funded by a grant from the State of Texas.” Furthermore, you acknowledge the members of the coalition are governmental bodies subject to the Act. Having reviewed your arguments and representations, we conclude that the coalition, being supported entirely by public funds, is a governmental body subject to the Act. *See* Open Records Decision Nos. 621 at 5 (1993) (finding Arlington Economic Development Foundation to be governmental body when agreement with city indicates city was providing general support for foundation), 302 (1982) (finding Brazos County Industrial Foundation to be governmental body when it receives unrestricted grant from city); Attorney General Opinion JM-821 (1987) (receipt of public funds for general support of activities of private organization brings that organization within definition of “governmental body”). Accordingly, we will address your arguments against release of the submitted information under the Act.

First, we address your argument that the submitted information is not subject to the Act. The Act is applicable to “public information.” *See* Gov’t Code § 552.021. “Public information” is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Likewise, the Act is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2). Conversely, the Act does not require a governmental body to release information if the governmental body that receives the request has neither possession of the information nor a right of access to it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989). You argue that the submitted information “should not become public information simply because the [border sheriffs] share the information” with the coalition. However, having considered your argument and reviewed the information at issue, we conclude that the submitted information relates to the transaction of the official business of the coalition and is maintained by the coalition, and, therefore, constitutes “public

information” of the coalition. See ORD 534 at 2-3, 518 at 2-3. Consequently, the coalition may only withhold this information from the requestor if it is excepted from disclosure pursuant to a provision of the Act. Thus, we next address your claimed exceptions.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You represent that some of the submitted information is received from various federal law enforcement agencies that have advised that such information is confidential. We note that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. See, e.g., Attorney General Opinion MW-95 (1979) (concluding that neither Freedom of Information Act nor the federal Privacy Act of 1974 applies to records held by state or local governmental bodies in Texas); Open Records Decision No. 124 (1976) (concluding fact that information held by federal agency is excepted by Freedom of Information Act does not necessarily mean that same information is excepted under the Public Information Act when held by Texas governmental body). Nevertheless, this office has recognized the interest of comity between state and federal authorities and concluded that when information in the possession of a federal agency is confidential under federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. Open Records Decision No. 561 at 8 (1990). In this instance, the coalition has not identified the submitted information obtained from federal agencies, the federal agencies from which such information was obtained, or a federal law which makes such information confidential. Furthermore, the submitted information indicates it was created by Texas sheriffs for the coalition. Thus, we are only able to consider whether the submitted information is confidential under applicable state law. However, the coalition has not cited to any specific state law that makes any of the submitted information confidential. See Gov’t Code §§ 552.301, .302; Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). Accordingly, the coalition may not withhold any of the submitted information under section 552.101 of the Government Code.

You also claim that the submitted information is excepted under section 552.108(b)(1) of the Government Code. Section 552.108(b) excepts from disclosure “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 . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in [a law enforcement agency], avoid detection, jeopardize officer safety, and generally undermine [law enforcement] efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To claim this exception, a governmental body must explain how and why release of the requested information would interfere with

law enforcement. Gov't Code §§ 552.108(b)(1), .301; Open Records Decision No. 562 at 10 (1990). You inform us the purpose of the coalition is "to coordinate law enforcement activities and share information to enhance law enforcement." However, the coalition has not explained how release of the submitted information at issue would interfere with law enforcement. Accordingly, the submitted information is not excepted from public disclosure under section 552.108(b)(1) of the Government Code. As you raise no other exceptions to disclosure, the coalition must release the submitted information.

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 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 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 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 258965

Enc. Submitted documents

c: Ms. Brandi Grissom
El Paso Times
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(w/o enclosures)