ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2006

Ms. Lisa Morris
Records Manager
Community Association of the Woodlands, Texas
2201 Lake Woodlands Drive
The Woodlands, Texas 77380-1118

OR2006-13748

Dear Ms. Morris:

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# 265075.

The Community Associations of the Woodlands, Texas (the "CATW") d/b/a The Woodlands Community Service Corporation received a request for all attorney fee bills associated with the Woodlands Community Association (the "WCA") and the CATW from July 1, 2006 through July 31, 2006. You state that the CATW will release records that pertain specifically to the WCA, an entity that you inform us is subject to the Act. *See* Gov't Code § 552.0036 (providing that certain classes of homeowners' associations are subject to the Act in the same manner as a governmental body). You claim that the CATW is not a governmental body for purposes of the Act, and the remaining requested information is not subject to the Act. We have considered your argument and reviewed the submitted information.

The Act defines "governmental body" in pertinent part as

> 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.

Id. § 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). 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 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). Thus, the CATW would be considered a governmental body subject to the Act if it spends or is supported in whole or in part by public funds.

You explain that the CATW is a private non-profit corporation created as a property management company for several property owners' associations. You inform our office that the CATW does not receive public funds in whole or in part. Consequently, based upon your representation, we find that the CATW is not a governmental body under section 552.003 of the Act. *See* Gov't Code § 552.003.

You also argue that the information at issue is not subject to the Act. The Act is applicable to "public information." *See id.* § 552.021. Section 552.002 of the Act provides that "public information" consists of

> 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)(1), (2). Thus, the Act is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. *Id.* § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987). You state that the CATW understands that records collected, assembled, or maintained on behalf of the WCA are subject to the Act and must be released unless an exception to disclosure applies. You contend, however, that the information at issue pertains exclusively to the CATW as a private corporation and is not collected, assembled, or maintained on behalf of the WCA. Based on your representations and our review of the information at issue, we conclude that this information is not subject to the Act and need not 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).

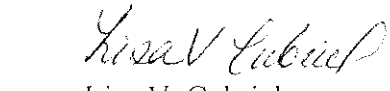
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 265075

Enc. Submitted documents

c: Mr. Foster McNair
135 East Mistybreeze Circle
The Woodlands, Texas 77381
(w/o enclosures)