



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 22, 2012

Mr. Robert T. Jarvis  
Counsel for The Gunter Volunteer Fire and Rescue, Inc  
Robert T. Jarvis Law Firm, PC  
123 West Houston  
Sherman, Texas 75090

OR2012-09684

Dear Mr. Jarvis:

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# 456867.

The Gunter Volunteer Fire and Rescue, Inc. ("GVFR"), which you represent, received a request for all records of GVFR revenue, income, disbursements, state and federal tax statements, meeting agendas and minutes, and donations for a specified time period. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note you have not submitted information pertaining to meeting agendas and minutes. Although you state GVFR submitted a representative sample of information, no portion of the submitted representative sample pertains to meeting agendas and minutes. Thus, we find the submitted information is not representative of the information sought in that portion of the request. Please be advised this open records letter applies only to the type of information you have submitted for our review. Therefore, this letter ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See Gov't Code* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information is presumed to be public). Thus, to the extent any information responsive to this portion of the request existed when the present request was

received, we assume it has been released.<sup>1</sup> If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we address your contention that the submitted information is not public information subject to the Act because only information related to the receipt or expenditure of public funds is public information subject to disclosure under the Act. 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* Gov’t Code § 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, 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).

“Whether or not a particular nonprofit volunteer fire department [is a governmental body subject to the Act] depends on the circumstances in each case, including the terms of the contract between the department and the public entity.” Attorney General Opinion JM-821 at 5 (1987) (citation omitted). Because fire protection is one of the services traditionally provided by governmental bodies, different considerations apply to fire departments that set them apart from private vendors of goods and services who typically deal with governmental bodies in arms-length transactions and make them more likely to fall within the Act. *Id.* In Attorney General Opinion JM-821, this office held the Cy-Fair Volunteer Fire Department (“Cy-Fair”) was a governmental body for purposes of the Act’s predecessor to the extent it was supported by public funds received pursuant to its contract with the Harris County Rural Fire Prevention District No. 9 (“RFPD”). *See id.* In issuing that opinion, this office analyzed the contract between Cy-Fair and RFPD, noting Cy-Fair received public funds to provide all of RFPD’s needed services. *See id.* This office also noted the contract provided Cy-Fair must submit one-year operating budgets and a three-year capital expenditure budget to RFPD for approval. Consequently, this office found the contract provided for the general support of Cy-Fair for purposes of the Act’s predecessor. *Id.*

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 information explaining GVFR’s relationship with the City of Gunter (the “city”) and any contract or charter between the city and GVFR. In response, you inform us that no contract or charter between the city and GVFR existed at the time the request was received. However, you state GVFR receives its funding from donations. You also state the city does not, nor has it ever, given funds directly

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

to GVFR. However, you explain “any funds distributed by the [c]ity are paid directly to the payee upon the [c]ity’s receipt of the invoice or bill.” Thus, you acknowledge the city distributes funds to support GVFR. Based on the submitted information, we also understand GVFR uses some city equipment and property. Upon review, we find that the city provides general support to GVFR, making GVFR a governmental body to the extent it receives the city’s financial support. *See id.*; *see also* Gov’t Code § 552.003(1)(A)(xii).

You state the submitted information pertains solely to funds received from donations. You inform us that “through the donations to GVFR, GVFR purchases equipment, tools, safety equipment, hosing, computers, bedding, furniture, kitchen equipment, medical supplies, uniforms, insurance for [its] members, continuing education hours for the individual certifications, training and any other needs of the GVFR.” You explain “[t]he donations are never comingled [sic] with funds from any other source and are separate and distinct from any funds that were paid by the [c]ity to any payee.” Based on your representations and our review, we find the submitted information relates to GVFR’s expenditure and receipt of donations, and does not pertain to GVFR functions supported by public funds. Thus, we find the submitted information is not subject to the Act, and GVFR is not required to release it in response to the 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 456867

Enc. Submitted documents

c: Requestor  
(w/o enclosures)