



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 9, 1975

The Honorable Neel Richardson
City Attorney
P. O. Box 424
Baytown, Texas 77520

Open Records Decision No. 87

Re: Is a city required to compile
answers rather than to provide
available information.

Dear Mr. Richardson:

You have requested our decision concerning a request for information made to the mayor of the City of Baytown under the Open Records Act, article 6252-17a, V. T. C. S.

Your request arises from a letter making 13 inquiries. Many of the inquiries are not for specific records per se, but are for explanations which require analysis of information in records held by the city. For example:

1. In 1965, Proposition No. 4 on the ballot states:
For or Against the issuance of \$55,000 for the fire station building bonds. The station was never built. What became of the money?
2. In 1965, Proposition No. 2 on the ballot states:
For or Against the issuance of \$130,000 for drainage improvement bonds. What became of the money left after \$75,000 was transferred to the Ward Road project?
- ...
13. Statement of the amount of money paid by the city for various study committees since 1969.

Section 3(a) of the Open Records Act makes public "[a]ll information collected, assembled, or maintained by governmental bodies. . ." with certain exceptions. Your principal objection to the request here is not that the information is excepted from disclosure, but that it requires the city to collect and assemble information in a form responsive to the citizen's questions rather than just providing information from existing records.

We first spoke to this issue in Attorney General Opinion H-90 (1973), shortly after the Act became effective. In response to the question of whether a governmental body may only release available raw data or whether it is under an obligation to make extensive computations and to assemble from various places the missing data necessary to comply with a request, we concluded that:

. . . [T]he Act refers to information already in the possession of the governmental body. Section 3(d) states:

'It is not intended that the custodian of public records may be called upon to perform general research within the reference and research archives and holdings of state libraries.'

On the other hand, it is certainly the public policy announced by the Act to make information available and in our opinion the governmental bodies must exercise a certain amount of good faith in assisting persons entitled to information to receive it.

In Open Records Decision No. 23 (1974) we said:

A request made under the Act must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request. However, once the information sought has been identified and it is determined that it is "public information" subject to disclosure under the Act, there is no provision for denying disclosure because of the volume of information involved.

In Open Records Decision No. 65 (1975), we decided that the Act requires the Department of Public Safety "to supply large volume class type information from the basic licensing records of Texas drivers." The request there was for the preparation of a magnetic tape containing information that could be retrieved only by a special programming effort. We pointed out that "It is not necessary that your department build and maintain files of data which it needs in a format dictated by a requesting party." However, we did decide that the Department was required to comply with the request.

In Open Records Decision No. 74 (1975), the request to a school district was for information which was contained in records including non-disclosable information. The district contended that the information was not a matter of record in the form requested and that it would require administrative, teacher and clerical time to obtain it. We determined that the requested information was public and was not excepted from disclosure. We said:

Although you state that the information requested is not on file in an easily accessible form, it is our opinion that the Open Records Act requires that such information be made available to the public.

In Open Records Decision No. 31 (1974), the governmental body was confronted with broad requests for information rather than for specific records. There we said:

... [Y]ou declared your willingness to cooperate in this request, but expressed a need for greater specificity in the enumeration of what was sought. While we sympathize with the difficulties such requests create, we believe it is incumbent upon the agency to make a good faith effort to attempt to identify such records as might fit the request and then to advise the requestor of the types of documents available so that he may properly narrow his request to specifics.

As to the request in this case, while most of the inquiries are not specifically directed to records held by the city, we believe that most of them are at least sufficient to obligate the city to make a good faith effort to respond with advice as to the type of documents available so that the requestor may properly narrow his request to specifics.

On the other hand, while the city is obligated to provide the public information it has, we do not believe that the Open Records Act requires you to perform any independent analysis, evaluation, or summary of information in response to questions posed by a requesting party. A governmental body's responsibility to extract information from source records is normally limited to those instances where the confidential or non-disclosable nature of a portion of the information must be protected, or where the nature of the record keeping system or administrative necessity or convenience requires the extraction to be performed by the agency itself.

We are supported in our interpretation as to the governmental body's responsibility under the Texas Open Records Act by the United States Supreme Court's action in a recent case under the Federal Freedom of Information Act, 5 U. S. C. A. § 552. The Court overruled a lower court order requiring an agency to produce or create explanatory material. The court held in NLRB v. Sears, Roebuck & Co., 43 U. S. L. W. 4491 at 4500 (U. S. April 29, 1975), that:

The Act does not compel agencies to write opinions in cases in which they would not otherwise be required to do so. It only requires disclosure of certain documents which the law requires the agency to prepare or which the agency has decided for its own reasons to create. Sterling Drug, Inc. v. FTC [450 F.2d 698(D. C. Cir. 1971)]. Thus, insofar as the order of the court below requires the agency to create explanatory material, it is baseless.

Your reasons for declining to disclose information responsive to the request are general in nature. You have not provided this office with specific records or information which you have determined to be excepted from disclosure by specific exception for our review in accordance with section 7 of the Act.

You state that information involved in certain numbered inquiries should be excepted from disclosure because of pending civil litigation concerning paving assessments. Without your specific determination that an exception applies to specific information, and without that information before us, we have no basis on which to decide that any exception applies.

However, we have said that where information is "specifically made public by statute, we do not believe that the section 3(a)(3) exception applies." Open Records Decision No. 43 (1974). And we have decided that detailed municipal budget information is public information by virtue of articles 689a-13, 689a-14, and 689a-15, V. T. C. S., as well as under the Open Records Act. Open Records Decision No. 52 (1974).

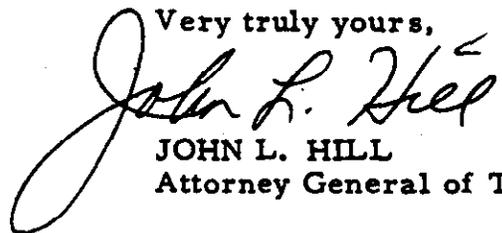
In this instance, it would appear that many of the inquiries made could have been substantially answered with readily available budgetary information which is required to be prepared and made public by specific statute.

The only decision we can make in regard to the request here is that the Open Records Act imposes an obligation on the City to make a good faith effort to relate the request to information held by it and when specific information is thus identified, to take all reasonable steps to "promptly produce such information for inspection or duplication, or both" (Sec. 4); and to "give, grant, and extend to the person requesting public records all reasonable comfort and facility for the full exercise of the right granted by [the Open Records] Act." [sec. 5(b)]. The Act generally does not require the City to analyze, summarize or evaluate information in response to a requesting party's question.

If, after identifying the public records sought, you determine that particular information contained therein is excepted from disclosure by some specific exception, then your determination and the information should be forwarded to this office pursuant to section 7 of the Act.

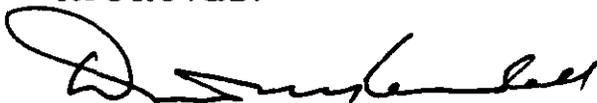
You ask whether charges may be made for the administrative costs of gathering information in addition to the actual cost of reproduction. Subsections (a) and (b) of section 9 delegate the question of costs, at least initially, to the Board of Control and the respective governmental bodies. We have consistently declined to usurp the responsibility to decide these matters. Open Records Decisions Nos. 8 (1973), 23 (1974), 65 (1975) and 74 (1975).

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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