



# The Attorney General of Texas

December 29, 1978

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Attorney General

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The Honorable Elland Archer  
City Attorney  
P. O. Box 137  
Mesquite, Texas 75149

Open Records Decision No. 220

Re: Whether records of a bank account opened in the name of a city but which is alleged to be a private account of an individual are public under the Open Records Act.

Dear Mr. Archer:

You request our decision pursuant to section 7 of article 6252-17a, V.T.C.S. You have received a request for access to information in bank account records including deposit slips, cancelled checks, and balance sheets. You contend that the information is not subject to the Open Records Act, and in the alternative, that it is excepted from required public disclosure under section 3(a)(1) and 3(a)(8).

This request involves an unusual factual situation. The information at issue was obtained by the Mesquite Police Department and the District Attorney's office in an investigation of allegations of possible criminal conduct involving misapplication of public funds. The information is the record of transactions in a bank account entitled "Mesquite Public Library." The account was established by, and was under the sole control of a former employee of the city. You state that the former employee was not authorized to open or maintain the account in her capacity as a city employee or to deposit city funds in the account.

It is clear that if the account was used to conduct the city's official business, the information would be public. Section 6(a)(3) of article 6252-17a, V.T.C.S., specifically makes public:

(3) information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies . . . .

It is the city's position that the account is not that of the city, but is a private one, and the only purpose for which the information is held is in connection with the criminal investigation. The results of the investigation were presented to the grand jury, which made no formal accusation of criminal conduct. You have advanced no continuing law enforcement interest which would apply to this information, and thus section 3(a)(8) is inapplicable. Open Records Decision No. 216 (1978).

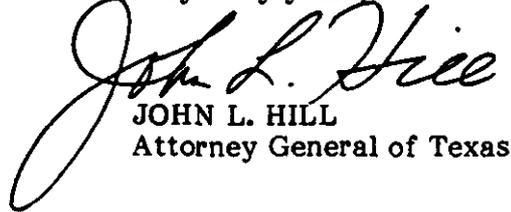
The city contends that the information is still excepted from required public disclosure under section 3(a)(1), because of the privacy right of the person whose conduct was investigated.

The right of privacy as described by the Texas Supreme Court in Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976), requires that the information contain highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities, and that the information not be of legitimate concern to the public.

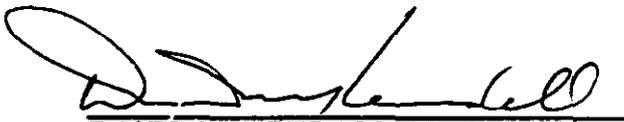
Here, we believe there is a substantial public interest and legitimate concern with the information. It consists of an account established in the name of a public body by a public employee. The dispute as to whether the account was authorized or not, and the dispute as to whether public funds were received or disbursed from the account are questions of legitimate public concern, and we believe the public interest in information bearing on them outweighs any privacy interest in the information.

Thus, it is our conclusion that the information requested is not excepted and therefore is public.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee