



# The Attorney General of Texas

September 17, 1979

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Honorable Mike Atkins  
Ector County Attorney  
Ector County Courthouse  
Odessa, Texas 79761

Open Records Decision No. 227

Re: Whether financial statements reflecting income and expenses of lessee of county airport are public under the Open Records Act.

Dear Mr. Atkins:

You request our decision pursuant to section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act. You have received a request for the monthly and annual financial statements and all other documents reflecting income and expenses submitted to the county by the lessee operator of the county airport. This information is submitted to the county under the terms of the lease agreement under which the airport is operated. You contend that this information is excepted from required public disclosure under section 3(a)(4) which excepts "information which, if released, would give advantage to competitors or bidders." The requesting party points out that section 6(a)(1) of the Act specifically makes public reports and audits made for governmental bodies. This situation does not involve the letting of a governmental contract.

The operation and maintenance of an airport by a county is a governmental function. V.T.C.S. art. 46d-15. A governmental body which sells gasoline and oil and charges storage fees for airplane hangars to those using the airport is engaged in a governmental function. City of Corsicana v. Wren, 317 S.W.2d 516 (Tex. 1958). The operation of an airport remains a governmental function even though it is leased to another. Flippin v. City of Beaumont, 525 S.W.2d 285 (Tex. Civ. App. — Beaumont 1975, no writ). See generally Schultz v. City of Houston, 551 S.W.2d 494 (Tex. Civ. App. — Houston [14th Dist.] 1977, no writ).

In Open Records Decision No. 99 (1975), this office held that section 3(a)(4) has no application to the release of financial data by a municipally-owned radio station operated by the city in its governmental capacity. It was said that:

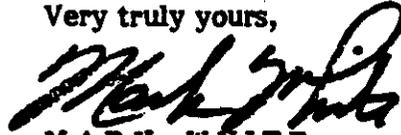
A city acts in its governmental capacity as an agent of the state, and in such a role, we do not believe that it may properly be deemed to compete with private enterprise. . . .

In Open Records Decision No. 153 (1977), it was held that lease agreements on city wharves were not excepted from disclosure under section 3(a)(4) because the management of the wharves was a governmental function. See State ex rel. Cummer v. Pace, 159 So. 679 (Fla. 1935) (access to information concerning operation of docks and terminals required even though sought by acknowledged competitor).

Under these decisions, a governmental body may not deny public inspection of financial information concerning the performance of a governmental function. We do not believe that the fact that that governmental function is performed by another on behalf of the county, an arrangement specifically authorized by statute, V.T.C.S. article 46d-4, changes this rule.

It is our decision that the section 3(a)(4) exception is not applicable to the information requested, and thus the information is public.

Very truly yours,



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