



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 23, 1990

Hon. Benjamin Euresti, Jr.
Cameron County Attorney
Cameron County Courthouse
974 E. Harrison Street
Brownsville, Texas 78520

Open Records Decision No. 558

Re: Whether the Open Records Act, article 6252-17a, V.T.C.S., requires a county official to compile and retain the driving records of county officers and employees (RQ-1866)

Dear Mr. Euresti:

You ask for advice on a question involving the Texas Open Records Act, article 6252-17a, V.T.C.S. The County Auditor's Office received a request under that statute for the driving records of elected officials and employees of Cameron County.

The county has authority to provide automobile liability insurance for some of its officers and employees. Local Gov't Code § 157.041; Attorney General Opinion MW-490 (1982). You state that Cameron County does not maintain driving records of the officers and employees it insures, although it has the names and driver's license numbers of these persons. The county furnishes names and driver's license numbers to its insurer, the Texas Association of Counties risk management pool, which obtains and reviews the driving records of persons driving county-owned vehicles. Driving records are available from the Texas Department of Public Safety on "written request and payment of a Three Dollar (\$3.00) fee by a person who submits the individual's driver's license number or his full name and date of birth and shows a legitimate need for the information." V.T.C.S. art. 6687b, § 21(f). On occasion, the sheriff's department forwards to the risk management pool the driving records of employees it has hired when such persons will be driving a county vehicle.

You state that neither the Cameron County Auditor nor the personnel office maintains such records and ask whether they are required to compile driving records. The Open Records Act does not require a governmental body to prepare new information in response to an open records request.

Open Records Decision Nos. 467 (1987); 87 (1975). You have cited no other law that might require you to maintain driving records, nor have we found any.

Section 3(a) of the Open Records Act was amended in 1989 to provide as follows:

All information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public

Acts 1989, 71st Leg., ch. 1248, § 9 at 5023 (emphasis added). The amending language is underlined.

Prior decisions of this office have recognized that a governmental body may contract with a consultant or independent contractor to prepare information for its use in the conduct of official business. See, e.g., Open Records Decision No. 192 (1978). On occasion, the independent contractor has maintained his report and underlying data in his own office, making it available for the governmental body to use without actually having physical custody of the records itself. See Open Records Decision Nos. 462 (1987) (investigation of university football program prepared by law firm on behalf of university); 437 (1986) (records prepared by bond underwriters and attorneys of utility district for district). But see Open Records Decision No. 492 (1988) (information stored in computers of economic forecasting company available to comptroller's office only through telephone link). Where the contractor has prepared information on behalf of a governmental body and makes it available to the governmental body, the information has been held to be subject to the Open Records Act, even though it is not in the governmental body's physical custody. See, e.g., Open Records Decision Nos. 499 (1988); 462 (1987).

The language added to section 3(a) codifies these prior decisions regarding information prepared for a governmental body. If a governmental body does not have a right of access to or ownership of information prepared for it by an outside entity, such information will not be subject to the Open Records Act.

In the case before us, the insurer obtains driving records of county employees for its own internal purposes in connection with administering the insurance program for counties belonging to the risk pool. It does not obtain or hold this information for Cameron County's use. The Open Records Act does not require Cameron County to seek county employees' driving records from its insurer.

S U M M A R Y

No law requires Cameron County to maintain driving records of elected officials and employees of the county and it does not maintain these records. The county's automobile liability insurer has acquired such records for its own use, not on behalf of or for the use of Cameron County. The Open Records Act does not require the county to seek copies of its employees' driving records from its insurer in response to a request under the act for such records.

Very truly yours,



J I M M A T T O X
Attorney General of Texas

MARY KELLER
First Assistant Attorney General

JUDGE ZOLLIE STEAKLEY
Special Assistant Attorney General

RENEA HICKS
Special Assistant Attorney General

RICK GILPIN
Chairman, Opinion Committee

Prepared by Susan L. Garrison
Assistant Attorney General