



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

November 28, 1990

Honorable Bob Bullock
Comptroller of Public
Accounts
L.B.J. State Office Bldg.
Austin, Texas 78774

Open Records Decision No. 576

Re: Whether an open records request regarding internal investigations of bingo should be directed to the comptroller or to the Alcoholic Beverage Commission (RQ-2052)

Dear Mr. Bullock:

The administration and enforcement of the Bingo Enabling Act, V.T.C.S. art. 179d, has been transferred from the comptroller of public accounts to the Texas Alcoholic Beverage Commission [hereinafter "the commission"]. The legislation effecting this change, House Bill 2260 (1989), provides for the transfer of all necessary records of the Comptroller of Public Accounts relating to the regulation of bingo to the commission. Acts 1989, 71st Leg., ch. 238, § 47(b), at 1130.

You advise that pursuant to an interagency contract [hereinafter, the "contract"], the comptroller continues to provide computer and microfilming services for bingo records. Under the terms of the contract, the comptroller retains computer and microfilm records created prior to the transfer of bingo regulation and updates these records with new information.

You advise that the contract contains the following provision:

Comptroller agrees to notify TABC promptly upon receipt of an Open Records Request. To the extent permissible by law, TABC will be responsible for replying to all Open Records Requests. If TABC receives the request but TABC's records are being maintained by the Comptroller, Comptroller agrees to provide the records to TABC.

You further advise that the comptroller has received an open records request for Bingo Enabling Act records [hereinafter, the "requested information"] that were transferred to the commission pursuant to House Bill 2260 but continue to be maintained by the comptroller pursuant to the contract. You ask whether the requestor must direct this request to the commission instead of to the comptroller.

The Open Records Act provides, in part, as follows:

Sec. 3. (a) 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.

. . . .

Sec. 4. On application for public information to the officer for public records in a governmental body by any person, the officer for public records shall promptly produce such information.

. . . .

Sec. 5. (a) The chief administrative officer of the governmental body shall be the officer for public records. . . . Each department head shall be an agent of the officer for public records for the purposes of complying with this Act. It shall be the duty of the officer for public records, subject to penalties provided in this Act, to see that the public records are made available for public inspection and copying.

House Bill 2260 clearly transfers legal custody of records relating to the regulation of bingo to the commission. You have advised us that the requested information relates to the regulation of bingo and is maintained by the comptroller for the commission.

Under these facts, we believe that the comptroller is acting as an agent for the commission with respect to maintenance of these records. The governmental body "by or

for" which the requested information is "collected, assembled, or maintained" is the commission. While physical custody of the requested information is in the hands of the comptroller, ultimate responsibility for the release or nondisclosure of the requested information remains with the commission. Cf. Attorney General Opinion JM-446 (1986) and authorities cited therein.

The officer for public records with respect to the requested information within the meaning of the applicable provisions of the Open Records Act is the chairman of the commission or his agent. The question, then, is whether the comptroller is the agent of the chairman of the commission for purposes of receiving open records requests as well as for purposes of physical maintenance of the requested information.

In Open Records Decision No. 497 (1988), we considered the language of sections 4 and 5 of the Open Records Act¹ and held, in part, as follows:

The purpose of sections 4 and 5 is to place a legal duty on the custodian of information, defined as the governmental body's chief administrative officer, to produce public information. The purpose of sections 4 and 5 is not to require that a requestor actually name the chief administrative officer.

. . . .

The language of section 5 assumes that the custodian of information will not be handling personally all requests for public records. . . . [S]ection 5 assumes that the custodian will delegate the responsibility for handling open records requests. . . .

Consequently, we believe sections 4 and 5 of the Open Records Act place an implicit duty on chief administrative officers to

1. The language of sections 4 and 5 has been amended since Open Records Decision No. 497 was issued, but not, we believe, in a way that affects the analysis set forth in Open Records Decision No. 497.

instruct their staffs about compliance with the Open Records Act and to make public the identity of persons within the governmental body to whom an open records request should be directed.

In ordinary circumstances, there would be no reason to assume that the comptroller had become an agent of the chairman of the commission for purposes of receiving open records requests merely because the comptroller had contracted to perform some document maintenance services for the commission. However, in this instance, the comptroller has expressly agreed, pursuant to the contract, to "notify TABC promptly upon receipt of an Open Records Request." We find nothing inimical to the language or purposes of the Open Records Act in the commission and the comptroller agreeing that the comptroller assume such a duty, so long as it is cumulative of the procedures prescribed by the Open Records Act. The contract does not, in this respect, require either the comptroller or the commission to exceed its constitutional or statutory duties, as the commission remains responsible for compliance with the open records request. See V.T.C.S. art. 4413(32), § 5.2 We note that the contract is a matter of public record.

Therefore, because of the specific terms of the interagency contract, we find that an open records request for information maintained for the commission by the comptroller pursuant to the contract may be directed to the chairman of the commission, the chairman's agents within the commission, or to the comptroller who has undertaken to become the chairman's agent for this purpose. Responsibility for responding to the open records request remains with the commission. Accordingly, we are returning to you the documents you submitted for our review pursuant to section 7 of the Open Records Act. The open records request must be promptly forwarded by you to the commission, which agency is responsible for making such response as it deems appropriate.

For purposes of calculating deadlines within the Open Records Act, an open records request for these records would be considered to have been received by the chairman of the

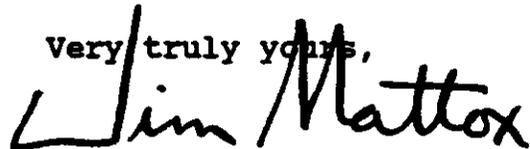
2. The validity of the contract under applicable law is, for purposes of this opinion, assumed without so finding.

commission when received by the comptroller. However, given the current circumstances, we will consider the commission to have received the open records request at issue here as of your receipt of this opinion.

S U M M A R Y

Where the comptroller of public accounts has expressly agreed, pursuant to an inter-agency contract, to notify the Alcoholic Beverage Commission promptly upon receipt of an open records request, an open records request for information maintained for the Alcoholic Beverage Commission by the comptroller pursuant to that contract may be directed to the chairman of the Alcoholic Beverage Commission, the chairman's agents within the Alcoholic Beverage Commission, or to the comptroller who has undertaken to become the chairman's agent for this purpose. Responsibility for responding to the open records request remains with the Alcoholic Beverage Commission. For purposes of calculating deadlines within the Open Records Act, an open records request would be considered to have been received by the chairman of the Alcoholic Beverage Commission when received by the comptroller.

Very truly yours,



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