



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

January 24, 1989

Ms. Rosalinda Garcia
County Attorney's Office
1001 Preston, Suite 634
Houston, Texas 77002

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5109; this decision is OR89-38.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Harris County Auditor's Office received a request for a copy of the long distance telephone call records of a justice on the 14th District Court of Appeals. On behalf of the Harris County Auditor, you request a decision from this office as to whether this information is available under the Open Records Act. You advise that the information at issue reflects the dialing party's telephone number, the name of the person to whom the telephone number is assigned, the number dialed, and the date, time, duration and cost of the call, but not the content or reason for the call. Your office asserts that the Harris County Auditor is an agent for the 14th Court of Appeals in collecting and maintaining these telephone service records and, as such, these records are not subject to the Open Records Act under section 2(1)(G) of the Open Records Act.

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The Open Records Act requires the release of all information held by "governmental bodies" unless one of the act's specific exceptions protects the information from required disclosure. Section 2(1)(G) of the act expressly excludes the judiciary from the act's definition of governmental body. The 14th District Court of Appeals, as part of the judiciary, is not subject to the Open Records Act.

The act does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the judiciary as the judiciary's agent, information maintained or collected by the agent is within the judiciary's constructive possession. Id. In Attorney General Opinion No. JM-446 (1986), the attorney general determined that the State Purchasing and General Services Commission was properly considered the agent of the Texas Supreme Court in collecting and abstracting information from the supreme court's telephone records.

On the other hand, not every agency that interacts with the judiciary is the agent of the judiciary, acting for it on its behalf in collecting, assembling, or maintaining information. See Benavides v. Lee, 665 S.W.2d 151 (Tex. App. - San Antonio 1983, no writ). Nor is every agency that frequently acts as the agent of the judiciary to be considered as always doing so. Compare Open Records Decision No. 411 (1984) with Attorney General Opinion JM-266 (1984). However, we believe that Attorney General Opinion JM-446 governs the present situation. The Harris County Auditor acts as agent for the 14th District Court of Appeals in collecting and maintaining telephone service records. The release of these records is a matter of discretion for the court, not for the county auditor. The Open Records Act does not apply to this information.

You also advise that pursuant to the Appellate Justice System Fund, article 2370b-4, V.T.C.S., the Harris County Auditor pays for the salary supplements, offices, furniture, equipment, telephones and other expenses of the 1st and 14th District Courts of Appeal. Please note that if the information requested reflects the amounts paid by the county auditor for these services, this information would be available to the public under the act, unless it falls within one of the act's specific exceptions to disclosure. The Harris County Auditor's Office is, itself, subject to the Open Records Act; the specifics of the long distance telephone calls made by justices of the Courts of Appeals are not subject to the act.

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Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-38.

Yours very truly,

Open Government Section
of the Opinion Committee 

Open Government Section
of the Opinion Committee
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JSR/FAF/bc

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Ref.: ID# 5109