



**THE ATTORNEY GENERAL
OF TEXAS**

April 3, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Thomas F. Keever
Assistant District Attorney
Dallas County District Attorney's Office
Administration Building
Dallas, Texas 75202

Dear Mr. Keever:

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# 5751; this decision is OR89-98.

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 Dallas County Treasurer's Office received a request to view "the warrants issued by Dallas County. More specifically those warrants that have not been cashed." On behalf of the Dallas County Treasurer's Office, you question whether the information may be released in conformity with sections 6(1), 6(3) and 6(5) of the Open Records Act. Although you recognize that these sections designate information public, you ask, in effect, whether the information may be withheld on the basis of its timeliness. You do not claim that any of the act's exceptions to disclosure apply.

You inform us that an inspection of the "uncashed" warrants would include an inspection of a computer printout detailing a monthly reconciliation statement of all county warrants, cashed and uncashed, that have been issued by Dallas County on the current county depository. Information does not fall outside the Open Records Act merely because it

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is stored by means of magnetic tape or disks rather than paper documents. Open Records Decision Nos. 401 (1983); 352 (1982). The act does not require, however, a complex computer search to create new information; nor does the act require a governmental body to prepare information that does not exist. See Open Records Decision Nos. 452 (1986); 342 (1982). On the other hand, access to information cannot be denied simply because obtaining the information requires a minimal search. Attorney General Opinion JM-672 (1987).

In your letter to us, you indicate that the information at issue is on file in a series of computer programs and could be retrieved. Apparently, the problem lies in "running" the programs. The Texas Supreme Court has held that "the [Texas Open Records] Act does not allow either a custodian of records or a court to consider the cost or method of supplying requested information in determining whether such information should be disclosed." Industrial Found. of the South, Inc. v. Texas Indus. Accident Bd., 540 S.W. 668, 687 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In fact, some compilation of computer stored information may be required. Id. If public information may be retrieved under an existing program or programs, the governmental body must perform this search. Attorney General Opinion JM-672. To aid in the search, you may ask that the requestor clarify or narrow his request, once you have informed him of the type of information the county treasurer's office has on file.

You raise sections 6(1), 6(3) and 6(5) of the act as restraints to disclosure of the information requested. Please note that section 6 of the act is not an exception to required disclosure of public information. The section in question provides:

Sec. 6. Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

(1) reports, audits, evaluations, and investigations made of, for, or by governmental bodies upon completion;

. . . .

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

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governmental bodies, not otherwise made
confidential by law;

. . . .

(5) all working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds or taxes by any governmental body, upon completion of such estimates. (Emphasis added.)

Section 6 does not limit the meaning of other sections of the Open Records Act. See Open Records Decision No. 460 (1987). Section 3(a) provides that [all] information . . . maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information . . . with the following exceptions only. (Emphasis added.) Information may not be withheld solely because a governmental body deems it in an "incomplete" form.

The applicable test for required disclosure is: (1) whether the information falls within the scope of section 3(a); and if so, (2) whether one of the section 3(a) exceptions is applicable. Open Records Decision No. 460. If the information satisfies the first prong of the test but fails the second prong, the information must be released. Information concerning warrants issued by a county is properly maintained by the county treasurer. See Local Gov't Code §.113.002. You have not raised any exception under section 3(a) that exempts this information from public disclosure.

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 OR89-98.

Yours very truly,
Open Government Section
of the Opinion Committee

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JSR/FAF/bc

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