



**THE ATTORNEY GENERAL
OF TEXAS**

April 26, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Ernest Guerrero
County Auditor
Room 107, Courthouse
Refugio, Texas 78377

Dear Mr. Guerrero:

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# 5742; this decision is OR89-142.

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.

Your office received a request from the county judge for copies of purchase invoices made by a county commissioner. Subsequently, your office received a request from the county commissioner in question, for the same information concerning the county judge, including telephone records. You question whether the information concerning the county judge is available under the Open Records Act and whether costs can be charged for copies of the information.

Section 3(a) of the Open Records Act makes "all information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business" public information unless it falls within one of the act's specific exceptions. Section 2(1) of the act defines "governmental body," in pertinent part, as follows:

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(B) the commissioners court of each county
and the city council or governing body of
each city in the state.

The commissioners court is expressly included in the definition of governmental body under section 2(1)(B) of the act. In Open Records Decision No. 204 (1978), the attorney general determined that information held by a county judge is subject to the Open Records Act. The county judge is both a member and the presiding officer of the commissioners court. Local Gov't Code § 81.001.

Open Records Decision No. 204 additionally concluded that information held by the county judge is subject to the Open Records Act except to the extent that it pertains to cases and proceedings before the county court. The information in question does not fall into this category; you raise no exception that protects from disclosure the telephone records of the county judge. Consequently, you must honor the request from the county commissioner as well as from the county judge. See also Attorney General Opinion JM-119 (1983).

You also ask whether you may charge copying fees to both the county judge and county commissioner. Section 9 of the Open Records Act discusses "cost of copies of public records." Subsection 9(a) of the act requires the requestor to bear the costs of access to or copies of legal-sized and smaller public records, "including costs of materials, labor, and overhead unless the request is for 50 pages or less of readily available information." Charges for copies of information covered by section 9 must be set in consultation with the State Purchasing and General Services Commission. The act only exempts legislators from its cost provisions. Because we have found no other statutory provision or judicial decision that exempts a county judge from the act's cost provisions, you may charge copying fees to both the county judge and the county commissioner. Of course, if they wish to inspect original records rather than obtain copies, no charge may be made.

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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 OR89-142.

Yours very truly,

Open Government Section 
of the Opinion Committee

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/FAF/bc

cc: Honorable Ginger Fagan
Refugio County Courthouse
Refugio, Texas 78377

James Pfeil
County Commissioner Pct. 3 & 3A
P.O. Box 413
Woodsboro, Texas 78393

Ref.: ID# 5742
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