



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

June 7, 1989

Mr. Charles F. McNabb  
First Assistant City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79999

Dear Mr. McNabb:

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# 6396; this decision is OR89-171.

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 City of El Paso has received a request from the County Judge of El Paso County for access to insurance policies obtained by a consultant with whom the city has contracted. You advise us that the terms of the consulting contract do not require that the consultant provide copies of its insurance policies to the city. The contract does, however, require the consultant to secure and maintain insurance policies adequate to protect it from claims that may arise from the performance of services under the contract. You contend that under the Open Records Act the city is under no duty to prepare such records and since it does not have such records in its possession, it cannot comply with the County Judge's request.

As you observe, this office has held on numerous occasions that a governmental body is under no obligation under the Open Records Act to prepare new information in

order to comply with a request made pursuant to the act. See, e.g., Attorney General Opinion JM-672 (1987). Neither is a governmental body generally required to obtain information that is not in its possession. Open Records Decision Nos. 445 (1986); 317 (1982). The Open Records Act does, however, apply to information held by consultants if the information relates to the governmental body's official duties or business; the consultant acts as agent of the governmental body in collecting the information, and the governmental body has or is entitled to access to the information. Open Records Decision No. 462 (1987).

You have cited no provision of general law or the city charter that would require the city to obtain copies of insurance policies secured by a consultant pursuant to contract, and we are aware of none. See generally Local Gov't Code, ch. 252; Tax Code, ch. 311. Therefore, absent a legal requirement apart from the Open Records Act that the city obtain such information, we conclude that the city is under no obligation to assemble the information in this instance.

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 OR89-171.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

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Prepared by Steve Aragon  
Assistant Attorney General

SA/bc

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