



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

November 22, 1989

Ms. Carolyn Ahrens  
Booth & Newsom, P.C.  
1900 First City Centre  
816 Congress Avenue  
Austin, Texas 78701-2443

Dear Ms. Ahrens:

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# 7391; this decision is OR89-401.

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. Attorney General Opinion H-436 (1974). 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 Cities of Sachse and Rowlett (the cities) each received an open records request from the City of Garland (the requestor) for records indicating the names of all certified accountants engaged by the cities to perform annual city and other audits and special reports regarding sewer contracts between each city and the requestor. The requestor also seeks copies of all reports and audits submitted to the cities. By a subsequent request, the requestor also seeks invoices and other records reflecting the cities' payment to consultants and attorneys. You contend that sections 3(a)(1) and 3(a)(3) of the Open Records Act protect this information from required public disclosure.

Information revealing identities of accountants who performed audits and special reports for the cities is basic factual information that cannot be withheld under section

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3(a)(3) and must be released. See, e.g., Open Records Decision No. 395 (1983) (copy enclosed); see also Open Records Decision No. 511 (1988). Similarly, invoices from the cities' attorneys that do not reveal details of work performed, invoices from the cities' consultants, and copies of checks used as payment for both, must be released. See V.T.C.S. art. 6252-17a, § 6(3); Open Records Decision No. 499 (1988). All annual financial statements submitted to the cities pursuant to Chapter 103 of the Local Government Code are also public and must be released without delay. See Local Gov't Code § 103.003(b).

Regarding your contentions about the audit reports and the detailed attorney billing statements, please note that section 7(a) of the act provides:

If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten calendar days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information. (Emphasis added).

Although you accompanied your letter with representative samples of the audit reports and attorney billing statements, you did not mark the records to show which specific portions of the documents come under the protection of the sections you raise. It is clear that sections 3(a)(1) and 3(a)(3) do not apply to all of the information contained in these records. For example, the fact that a client is billed for drafting a legal memorandum is not protected. Your burden under section 7(a) is to request a decision on whether specific information is within specific exceptions.

We are returning to you the audit reports and attorney billing statements you submitted for review. Please resubmit the documents with markings to indicate the specific information you contend comes under the protection of the sections you raised and explain how sections 3(a)(2) and/or 3(a)(3) applies. You have 10 days from receipt of this

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letter in which to resubmit the documents at issue. Otherwise, the information must be released.

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 OR89-401.

Yours very truly,

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

JSR/RWP/le

Ref.: ID# 7391  
ID# 7203  
ID# 7301  
ID# 7391  
ID# 7421  
ID# 7499  
ID# 7541

Enclosure: Attorney Billing Statements  
Audit Reports  
ORD-395

cc: Mr. Steven R. Pitzner  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002