



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

May 15, 1990

Mr. Randall Patterson
City of Brenham
P.O. Box 1059
Brenham, Texas 77833-1059

OR90-187

Dear Mr. Patterson:

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# 8729.

The City of Brenham received a request for copies of several planimetric maps of the city's aerial mapping system, specifically maps G-12, G-13, and G-14. You indicate that the city digitizes these maps, generating a computer model of the location of various water, sewer, gas, and electrical lines, and other information. You do not raise any exceptions to disclosure of the information, and in fact, indicated to this office your willingness to release the information, but you ask several questions concerning the request. You ask whether the photographs and the digitized data base constitute information under the Open Records Act. You also ask about the costs you may charge for records, specifically whether the city may "re-coup any of the procurement cost of acquiring the photographs, digitizing the photographs, or preparing the maps in connection with the request."

Photographs do constitute information within the coverage of the Open Records Act. Open Records Decision No. 423 (1984). Information in a computer data base is also included within the Act's coverage. See Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 492 (1988); 352 (1982).

Section 9 of the Open Records Act deals with costs of copies and provides as follows

(a) The cost to any person requesting noncertified photographic reproductions of public records comprised of pages up to legal

size shall not be excessive. The State Purchasing and General Services Commission shall from time to time determine guidelines on the actual cost of standard size reproductions and shall periodically publish these cost figures for use by governmental bodies in determining charges to be made pursuant to this Act. The cost of obtaining a standard or legal size photographic reproduction shall be in an amount that reasonably includes all costs related to reproducing the record, including costs of materials, labor, and overhead unless the request is for 50 pages or less of readily available information.

(b) Charges made for access to public records comprised in any form other than up to standard sized pages or in computer record banks, microfilm records, or other similar record keeping systems, shall be set upon consultation between the officer for public records and the State Purchasing and General Services Commission, giving due consideration to the expenses involved in providing the public records making every effort to match the charges with the actual cost of providing the records. The costs of providing the record shall be in an amount that reasonably includes all costs related to providing the record, including costs of materials, labor, and overhead.

Subsection (a) governs standard-sized reproductions. See Open Records Decision No. 488 (1988). Subsection (b) deals with access to public records comprised in forms other than standard-sized pages. Charges for access to information covered by section 9(b) must be set in consultation with the State Purchasing and General Services Commission. See Attorney General Opinion JM-672 (1987); Open Records Decision No. 352 (1982). See also 1 T.A.C. § 111.61 et seq. (enclosed). The Open Records Act does not authorize charging "fair market value" for information that may be of commercial value. Open Records Decision No. 489 (1988). You may not pass on to the requestor the original costs to the city of having the pictures made or digitized, but you may charge him the costs of preparing copies for him.

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 OR90-187.

Yours very truly,

David Newton

David A. Newton
Assistant Attorney General
Opinion Committee

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Ref.: ID# 8729

Enclosure: 1 T.A.C. § 111.61 et seq

cc: Craig Kankel, P.E.
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