



Office of the Attorney General
State of Texas

July 19, 1993

DAN MORALES
ATTORNEY GENERAL

Ms. Susan Albers
General Counsel
Texas State Treasury
P.O. Box 12608
Austin, Texas 78711

OR93-466

Dear Ms. Albers:

During the prior administration of the Texas State Treasury, your agency asked 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# 20836.

The Texas State Treasury (the "treasury") received two requests for information relating to telephone and fax logs, assignment of treasury vehicles, and open records requests. Specifically, the requestor seeks sixteen categories of information:

- [1.] all freedom of information requests to the Texas Treasury by R.G. Ratcliffe and/or the Houston Chronicle since Jan. 1, 1991.
- [2.] all responses from the Treasury to open records requests by R.G. Ratcliffe and/or the Houston Chronicle since Jan. 1, 1991.
- [3.] any/all phone logs for executive offices of the Treasury and/or the private offices of Kay Hutchison since Jan. 1, 1991.
- [4.] a list of all telephone numbers and fax machine numbers into the Treasury executive offices and/or Ms. Hutchison's private office since Jan. 1, 1991.
- [5.] any and all phone bills paid by Kay Hutchison personally and/or the Texas Treasury for installation, service or monthly billing of phone and fax lines into the executive offices or Ms. Hutchison's private office since Jan. 1, 1991.
- [6.] any log that would document phone numbers and the source of fax transmissions sent and received from the executive offices and/or Ms. Hutchison's personal office since Jan. 1, 1991.

[7.] a list of the license plates of all Texas Treasury Department vehicles and the employee they are assigned to since Jan. 1, 1991.

[8.] any and all installation, billing and payment records; and all phone logs and/or other information for the phone number 463-6007 since Jan. 1, 1991.

[9.] all freedom of information requests to the Texas Treasury by George Shipley since Jan. 1, 1991.

[10.] all freedom of information requests to the Texas Treasury by any and all representatives and/or employees of the Bob Krueger for U.S. Senate Campaign since Jan. 1, 1991.

[11.] all freedom of information requests to the Texas Treasury by any and all representatives and/or employees of the Jack Fields for U.S. Senate Campaign since Jan. 1, 1991.

[12.] all freedom of information requests to the Texas treasury by any and all representatives and/or employees of the Joe Barton for U.S. Senate Campaign since Jan. 1, 1991.

[13.] responses to all freedom of information requests to the Texas Treasury by George Shipley since Jan. 1, 1991.

[14.] responses to all freedom of information requests to the Texas Treasury by any and all representatives and/or employees of the Bob Krueger for U.S. Senate Campaign since Jan. 1, 1991.

[15.] responses to all freedom of information requests to the Texas Treasury by any and all representatives and/or employees of the Jack Fields for U.S. Senate Campaign since Jan. 1, 1991.

[16.] responses to all freedom of information requests to the Texas Treasury by any and all representatives and/or employees of the Joe Barton for U.S. Senate Campaign since Jan. 1, 1991.

We understand that information requested in category 3 and some of the information requested in category 8 has been made available to the public. As the letter we received from the treasury does not comment on category 7, we assume that the availability of this information has not been disputed and will be made available to the public. The treasury

claims that the documents contained in the remaining categories are records of the judiciary and are thus not subject to the Open Records Act.¹

Section 2(1)(H) (formerly section 2(1)(G)) excepts the judiciary from the Open Records Act. The letter from the treasury advises us that all of the requested information, except as noted above, is in the possession of the Travis County 147th Grand Jury and thus constitutes records of the judiciary. In support of this contention, we are referred to Open Records Decision No. 513 (1988), in which this office held that the Open Records Act does not apply to grand juries, nor to records within the constructive possession of grand juries. We note, however, that information may not be withheld as information in the constructive possession of the grand jury merely because the information had been submitted to the grand jury pursuant to a subpoena; for a governmental body to withhold such information, the governmental body must have either generated or created the information at the behest of the grand jury. *Id.* at 4. Consequently, a record created or gathered pursuant to a governmental body's own authority that is subsequently subpoenaed by the grand jury is still subject to the Open Records Act if the governmental body continues to hold a copy of that record after compliance with the subpoena; such a record may be withheld only if one of the act's exceptions applies. *Id.* at 4-5.

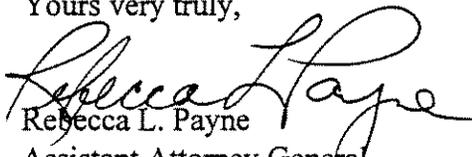
In this instance, the grand jury has subpoenaed all of the requested information, except as noted above. The treasury, however, has retained copies of some of the information. Furthermore, the grand jury has returned most of the subpoenaed information to the treasury. Records, copies of which the treasury has retained, and records returned to the treasury are subject to the Open Records Act. As the treasury has not raised any valid exceptions to disclosure under section 3(a) of the act, we conclude that this information must be released. *See* Open Records Decision No. 363 (1983).

¹The treasury received two previous requests for related information. Section 7(a) of the Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. The treasury received these requests on May 7, 1993, and May 26, 1993, respectively. We received the treasury's request for a decision in a letter dated June 22, 1993. Consequently, the prior administration failed to request a decision within the ten days required by section 7(a) of the act. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public, *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ), unless the governmental body can make a compelling demonstration that the information should not be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third party interests are at stake, *see* Open Records Decision No. 150 (1977). In this instance, we determine that the treasury has not made a compelling demonstration that the requested information should be withheld from required public disclosure under the Open Records Act. Accordingly, the information requested in these two requests must be released in its entirety.

To the extent that any records, the sole copies of which are still in the actual possession of the grand jury, those records are not presently subject to the Open Records Act, as they are considered records of the judiciary. *See* Open Records Decision No. 513 (1988). In other words, if the grand jury retains the only copy of such records, those records are temporarily removed from the ambit of the Open Records Act. Once these records are returned to the treasury, they will be subject to the Open Records Act.

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 contact this office.

Yours very truly,


Rebecca L. Payne
Assistant Attorney General
Chief, Open Government Section

RLP/GCK/jmn

Ref.: ID# 20836
ID# 20998

cc: Mr. Joe Cutbirth
Fort Worth Star Telegram
1005 Congress Avenue
Suite 920
Austin, Texas 78701

Mr. R. G. Ratcliffe
Houston Chronicle
1005 Congress Avenue
Suite 770
Austin, Texas 78701

Mr. George Kuemple
Reporter
The Dallas Morning News
1005 Congress Avenue
Suite 930
Austin, Texas 78701