



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 31, 1993

Ms. Alesia L. Sanchez  
Legal Assistant  
Legal Services, 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR93-768

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 22818.

The Texas Department of Insurance (the "department") received an open records request for the names of "all entities who utilize the 9032 code who are not yet eligible for experience rating." You explain as follows:

The 9032 code is an employer type code used by the TDI Workers' Compensation Division and is considered by this agency to be an open record. Likewise, whether an employer is or is not eligible for experience rating by the Workers' Compensation Division is also public information.

You do not contend that the requested information is excepted from required public disclosure under the Open Records Act. In fact the department has previously provided the requestor with a list of employers who are currently using the 9032 code along with their current experience rating modifier. See generally Open Records Decision No. 95

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<sup>1</sup>The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

(1975). You state that the department was able to comply with the prior request because that information could be easily compiled from an agency database.<sup>2</sup>

You state that the current request seeks information contained in 150,000 employer files held in the Workers' Compensation Division. Except for certain 1991 data, this information has not yet been entered into an agency database. You contend that in this instance the department is not required to compile a list of the requested information for the requestor. We agree. It is well-established that the act does not require a governmental body to prepare new information in response to an open records request. *See* Open Records Decision No. 342 (1982). Consequently, except for the requested information currently in the department's database, the department is not required to compile a list of the requested employers.

You further contend that because the 150,000 files contain other records that are excepted from required public disclosure under the Open Records Act, the department is not required to grant to the requestor access to the files to compile a list himself. Although you have not submitted to this office a sample of the types of records you believe are excepted from required public disclosure, assuming *arguendo* that such is the case, this office agrees that the act does not require public access to those files.<sup>3</sup> *See* Attorney General Opinion JM-672 (1987) at 6.

Finally, you state that to provide the requestor with copies of the requested information would require agency personnel "to supervise the production of the documents." You contend that the requested information is not "readily available" and "therefore this agency should be able to charge the requestor for labor costs incurred by the agency, as well as the charge for copies of the requested information." Section 552.261(b) of the Government Code provides:

The cost of obtaining a standard or legal size photographic reproduction [of a public record] shall be 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 or fewer pages of readily available information.

This office has previously held that where a requestor seeks copies of records and an extensive physical search is required to sort out confidential records from requested information, the requested records are not "readily available" and the governmental body therefore may charge for materials, overhead, and labor in separating the confidential information. Open Records Decision No. 488 (1988) at 8. The determination whether

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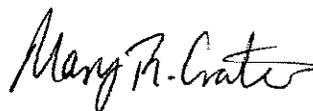
<sup>2</sup>In Attorney General Opinion JM-672, the attorney general indicated that a minimal computer search may be required for existing information stored in computers.

<sup>3</sup>Because the requestor has not requested access to or copies of the other records in these files, we need not determine at this time whether those records are excepted from required public disclosure.

the requested information constitutes "readily available" information requires the resolution of factual questions and is therefore beyond the purview of this office.

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 our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/RWP/rho

Ref.: ID# 22818

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