



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 15, 1994

Mr. Layton Z. Woodul, Sr.
Attorney
Crenshaw, Dupree & Milam, L.L.P.
P.O. Box 1499
Lubbock, Texas 79408-1499

OR94-061

Dear Mr. Woodul:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 21871.

Lubbock County (the "county"), which you represent, has received a request for "copies of all subleases in force for tenants in a building which is owned by Lubbock County." You state that the county leases the building to Westar, a property management business that subleases the building's offices to other tenants. You contend that the subleases are not subject to the Open Records Act because the county does not have physical possession or access to them, pursuant to section 552.021 of the Government Code (former section 3(a), article 6252-17a, V.T.C.S.).

Section 552.021 provides in part:

(a) Information is public information if under a law or ordinance or in connection with the transaction of official business, it is collected, assembled or maintained:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

The Open Records Act does not ordinarily require that a governmental body obtain information not in its possession. Open Records Decision No. 499 (1988) at 2.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg. ch. 268, § 46. 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.

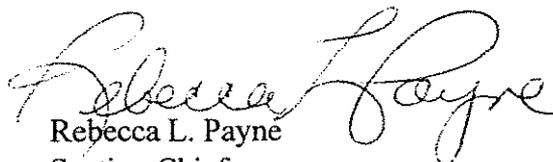
However, the physical location of the records is not dispositive of whether the information is subject to the act. *Id.* The criteria used to determine whether the act applies to information held by a private entity are: 1) the information relates to the governmental body's official business; 2) the consultant acts as an agent of the governmental body when collecting the information; and 3) the governmental body has or is entitled to the information. Open Records Decision No. 462 (1987).

We think these factors apply to the requested information in Westar's possession. The information clearly relates to the county's official business, *i.e.*, information about a county-owned building. Westar also acts as the county's agent in subleasing the building to other tenants. In contracting with Westar to manage the property, the county is engaging another entity to do a task the county would normally do, *i.e.*, rent and manage the office space in the county-owned building. *See* Open Records Decision Nos. 518 (1989); 445 (1986). The contract between the county and Westar provides that Westar submit a form approved by the county covering subleases of space in the building. In addition, the county inspects each proposed sublease and retains the right to refuse the use of the building by any sublessee "which Landlord deems not in keeping with its policies or status as a governmental body." *See* "Lease/Management Agreement" between the county and Westar at Exhibit "C". Finally, although the county does not have physical possession of the subleases, it does have access to the information pursuant to its contract with Westar. *Id.* ("Landlord may at any time audit the books and records of Tenant with respect to the premises . . ."). Therefore, the information in the request is subject to the Open Records Act.

You have not explained which exceptions to disclosure under the Open Records Act apply to the requested information. If a governmental body does not explain how and why a particular exception applies to a request for information within 10 days of receipt of the request, the information is presumed to be open. Open Records Decision Nos. 565 (1990); 528 (1989); *see also* Govt Code §§ 552.301, 552.302 (establishing 10 day deadline and presumption of openness). Moreover, a governmental body may not avoid or delay compliance with the act by challenging its overall applicability. Open Records Decision No. 528. You must therefore disclose the requested information in its entirety.

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,



Rebecca L. Payne
Section Chief
Open Government Section

RLP/LRD/rho

Ref.: ID# 21871

Enclosures: Submitted documents

cc: Mr. Burle Pettit
Lubbock Avalanche Journal
P.O. Box 491
Lubbock, Texas 79408
(w/o enclosures)