



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1998

Ms. Claudia T. Bridges
Assistant District Attorney
Waller County
836 Austin Street, Suite 105
Hempstead, Texas 77445

OR98-1179

Dear Ms. Bridges:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114947.

Several different departments of Waller County, including the Waller County Criminal District Attorney, received a joint open records request for eighteen categories of information pertaining to the enforcement of traffic laws and the search of automobiles by law-enforcement officers. You explain that, as legal counsel for all county officials, you are seeking a decision for the other referenced county departments as well. You argue that most of the records do not exist. You contend that the remaining records are excepted from required public disclosure pursuant to sections 552.103, 552.107, 552.108, and 552.111 of the Government Code.¹

You inform us that much of the requested information is not within the custody of the various listed departments. It is well established that the Open Records Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). *But see* Open Records Decision No. 317 (1982) (fact that information originally generated by another entity not relevant to determination of whether it is covered by Open Records Act while possessed by governmental body). To the extent that the open records request seeks records that are not within the possession of the various departments, they need not comply with the request nor need we consider the exceptions you raise.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

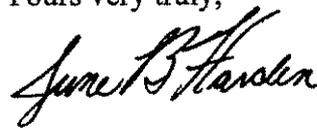
You note that certain requested items may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* You assert no exceptions for these requested documents. If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

Finally, we note that the submitted documents appear to be judicial records. The Open Records Act does not apply to records of the judiciary. Gov't Code § 552.003(B). As these are records maintained by the court, you need not release them under the Open Records Act. Attorney General Opinion DM-166 (1992). As records of the judiciary, however, the information may be public by other sources of law. Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); *see Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released).

Additionally, the records may be subject to disclosure under statutory law governing municipal courts. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/gle

Ref.: ID# 114947

Enclosures: Submitted documents

cc: Mr. Howard G. Barker
American Drivers Association
200 Gate Way Center, Suite 326
Liberty City, Texas 75662
(w/o enclosures)