



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 4, 1989

Mr. Apolonio Flores
Housing Authority of the City
of San Antonio
818 S. Flores St.
P. O. Drawer 1300
San Antonio, Texas 78295

Dear Mr. Flores:

You asked this office for an opinion as to whether a governmental entity may charge for making records available when significant expense is involved in making records available as required by the Texas Open Records Act, article 6252-17a, V.T.C.S. Your letter was assigned ID# 5241; this decision is OR89-001.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You stated in your letter that you believe section 9(b) of the act allows you to charge in advance for the expense of retrieving requested records. Your interpretation of section 9(b) is incorrect; you may not charge in advance for making records available to a person requesting physical access to the records.

Section 9(b) allows charges to be made for access to public records in any form other than standard sized pages, i.e., data in computer record banks, microfilm records, or other similar record keeping systems. You have not alleged that the information requested is kept in a form listed in section 9(b). A governmental body may, in certain

circumstances, exact charges for providing access to non-standard records. Attorney General Opinion JM-292 (1984). Additionally, any charges for access to non-standard materials shall be set in consultation with the State Purchasing and General Services Commission; you have not indicated that the charges you want to make were set in consultation with the Commission. This office has held that any charges must be set in consultation with the 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." See Attorney General Opinion JM-672 (1987); Open Records Decision No. 352 (1982).

Section 9(a) authorizes governmental bodies to charge for copies of standard-sized documents. It does not authorize charging for physical access to standard-sized original documents.

The Open Records Act gives requestors the option to take notes from or pay for the duplication of public records, or both. V.T.C.S., art. 6252-17a, § 4; Open Records Decision No. 152 (1977). If confidential information is included in the records, the option of physical access must be denied. You do not, however, indicate that any of the requested information is confidential.

Section 11 allows posting of a bond for payment of costs for the preparation of records, or a cash prepayment, if preparation of the records would be unduly costly and reproduction of the records would cause undue hardship to the agency if the costs were not paid. This section does not authorize prepayment of costs or posting of a bond in all instances. Only where the agency has made the requisite showing of undue cost or hardship associated with the production of records may a prepayment or bond be required. See, e.g., Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 687-88, (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

Further, it is of particular importance that governmental bodies provide public records to requestors at the actual cost of producing those records. The Open Records Act contains criminal sanctions for failing or refusing, with criminal negligence, to give access to or to provide for the copying of public records. See V.T.C.S., art. 6252-17a, § 10(b), (e) (making violation of section 10(b) a misdemeanor). Although charging excessive costs for copies of public records is not in and of itself an offense

Apolonio Flores
January 4, 1989
Page 3

under subsection 10(b) of the act, charging excessive fees constitutes evidence of a violation of section 10(b). Attorney General Opinion JM-265 (1984).

The information requested, which includes agency by-laws, budgets, and contracts, should be readily available as standard-sized public information. It is unlikely that any of the information would fall within an exception to the Open Records Act's requirement of disclosure. You should make the requested information available for public inspection at the earliest date possible. This office is aware that the information at issue here was originally requested in writing on November 17, 1988, and was requested in person at your agency as early as May, 1988.

Because case law and prior published open records decisions resolve these issues, 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 OR89-001.

Yours very truly,

Open Government Section
of the Opinion Committee
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PB/bra

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