



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

January 13, 1989

Arley John Finley  
Mayor  
City of Hardin  
P.O. Box 324  
Hardin, Texas 77561

Dear Mayor Finley:

You ask whether you have followed proper procedures in response to a request for public records under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 4865; this decision is OR89-006.

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.

As mayor of Hardin, Texas, you received a request for information contained in the town's annual audit for the fiscal year ending June 30, 1988. Although the audit had not been completed at the time you received the request, you offered the requestor the option to either view or make copies of the records on which the audit was based or to pay the cost of engaging a clerk to copy the information for him. You now ask if this was a proper response.

It is well established that the Open Records Act does not require a governmental body to prepare new information. Open Records Decision No. 342 (1982). Nor does the act require the preparation of information in the form requested by a member of the public. Open Records Decision No. 145 (1976). The act applies only to information already transcribed into tangible form.

Although it is not clear in your letter, you indicate that compiling copies of the requested records would result in an undue hardship to the town unless additional personnel were hired. The Texas Legislature recently amended section 9 of the act with the following underscored language:

(a) The cost to any person requesting noncertified photographic reproductions of public records comprised of pages up to legal size shall not be excessive. The State Board of Control shall from time to time determine the actual cost of standard size reproductions and shall periodically publish these cost figures for use by agencies in determining charges to be made pursuant to this Act. The cost of obtaining a standard or legal size photographic reproduction shall be in 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 pages or less of readily available information.

In Open Records Decision No. 488 (1988), the attorney general examined the recent amendments to section 9 and concluded that subsection 9(a) requires the requestor of information to bear the cost of copies of up to legal-size public records, "including costs of materials, labor, and overhead unless the request is for 50 pages or less of readily available information." Assuming that the requested information consists of more than 50 pages, the city is authorized to charge the requestor with the costs of any additional personnel required to assist in the identifying, locating, and copying of the requested documents. We also note that requestors may be required to post bond for the payment of costs as a condition precedent to the preparation of records when the preparation of the records is "unduly costly" and their reproduction would cause "undue hardship to the . . . agency if the costs were not paid." V.T.C.S. art. 6252-17a, § 11; 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. 9312 (1977).

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It is of particular importance, however, 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 § 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 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).

On the other hand, the Open Records Act does not authorize charging for physical access to standard-sized public records. In Open Records Decision No. 152 (1977), this office determined that a requesting party has the option of taking notes from or obtaining copies of public records, or both. This option can be denied only if confidential records would inadvertently be revealed. We do not understand that to be a problem here.

Assuming that these guidelines have been followed, it would seem that the city has acted in compliance with the prescribed procedures as outlined in the Open Records Act. Consequently, this office will consider this matter closed.

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 refer to OR89-006.

Yours very truly,

*Open Government Section  
of the Opinion Committee* 

Open Government Section  
of the Opinion Committee  
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JSR/RWP/bra

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ID# 4706

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