



**THE ATTORNEY GENERAL
OF TEXAS**

April 25, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Robert Groth
Director of Community Services/
City Secretary
City of Robinson
111 W. Lyndale
Robinson, Texas 76706

Dear Mr. Groth

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5976; this decision is OR89-138.

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.

The City of Robinson received an open records request for several items, including certain federal income tax forms, that you contend are protected from public disclosure by section 3(a)(2) of the Open Records Act. You also state that the city has previously released other requested information pursuant to a prior request from the same special interest group making the current request; you inquire whether the act requires that you duplicate your staff's efforts in fulfilling the requests a second time, or "may the requests be considered as political harassment" and, as such, disregarded.

In Open Records Decision No. 512 (1988), this office held that section 4A of the act did not authorize governmental bodies to deny a party's repeated requests for the same information. Although the decision did not address the issue of harassment, this office does not believe that a twice repeated request by an individual or group of citizens

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constitutes "political harassment." You may not, therefore, withhold the public information currently being requested on these grounds. Nor does the act authorize withholding information on this basis. In fact, the act prohibits inquiring into the motives of the requestor.

You must, however, withhold the requested federal income tax forms. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, see Open Records Decision Nos. 455 (1987), this office will raise section 3(a)(1) because the release of confidential information could impair the rights of third parties and because its improper release of confidential information constitutes a misdemeanor. See V.T.C.S. art. 6252-17a, § 10(e). Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Income tax returns and return information are expressly made confidential in Title 26 of the United States Code, section 6103(a). Except for certain exceptions listed in section 6103 that are not applicable here, this type of information may not be released

Finally, you ask about costs of reproducing public documents, especially where city personnel must manually search the city's files to locate the requested information. Open Records Decision No. 488 (1988) (copy enclosed), which discusses recent amendments to the Open Records Act concerning who must bear reproduction costs of public records. Section 9(a) of the act, with the amended language underlined, provides:

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.

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We also note that a governmental body may take a reasonable amount of time to comply with a request for public information. See Open Records Decision No. 467 (1987).

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 OR89-138.

Yours very truly,

Open Government Section 
of the Opinion Committee

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Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

Enclosure: ORD 488

Ref.: ID# 5976