



**THE ATTORNEY GENERAL
OF TEXAS**

October 11, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Leon G. Bean
Attorney at Law
1717 N. Mesa Street
El Paso, Texas 79902

Dear Mr. Bean:

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# 7585; this decision is OR89-334.

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 Village of Vinton received an open records request for receipts of expenditures incurred by village aldermen while attending a Texas Municipal League workshop in Corpus Christi. You state that the aldermen, who each received \$600.00 for expenses during the workshop, were instructed that it was not necessary to keep receipts of their expenses, but that the aldermen might be able to locate the receipts from their trip if asked to do so. You inquire whether the Open Records Act requires the aldermen to produce the receipts. This letter ruling does not address the propriety of not requiring the village's aldermen to keep receipts of their expenditures, nor does it address whether the "allowance" of \$600.00 constituted a grant of public funds for a private purpose in violation of article III, section 52, of the Texas Constitution. These matters are not governed by the Open Records Act.

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The receipts for expenditures of public funds normally are protected by none of the act's exceptions to required public disclosure; these are public records that must be released. See V.T.C.S. art. 6252-17a, § 6(3). The fact that these records may be held outside of the village clerk's office is irrelevant to whether they are subject to the Open Records Act. See Open Records Decision Nos. 462 (1987); 356, 332 (1982) (enclosed). Consequently, to the extent that the requested receipts of the aldermen's expenditures exist, they must be released without delay.

On the other hand, the Open Records Act does not require that a governmental body prepare new records in response to a requestor if the requested information does not exist. Open Records Decision No. 445 (1986). If it is the aldermen's contention that they did not possess the requested receipts at the time they were notified of the request, each alderman must submit to this office, within five days of your receipt of this letter, an affidavit attesting to facts surrounding the disposal of each receipt.

Finally, one of the citizens who complained of the city's failure to comply with the Open Records Act submitted evidence that the council inquired about his motives in seeking the information at issue. Such an inquiry is improper. See art. 6252-17a, § 5(b).

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 OR89-334.

Yours very truly,

*Open Government Section
of the Opinion Committee*
Open Government Section
of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General

Enclosures: ORD 462
ORD 356
ORD 332

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Ref.: ID# 7585
ID# 7656
ID# 7614
ID# 7601
ID# 7576
ID# 7573