



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 25, 1989

Mr. Ken Taylor
City Manager
City of Portland
P.O. Drawer 1285
Portland, Texas 78374-1285

Dear Mr. Taylor:

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# 7632; this decision is OR89-339.

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. Attorney General Opinion H-436 (1974). The act does not require this office to raise and consider exceptions that you have not raised.

The City of Portland received an open records request for copies of all of the city mayor's office telephone bills paid by the city for the years 1981 through 1986. Although those bills were in fact paid from city funds, the account statements for those years named the mayor individually as the telephone customer. In 1989, it came to light that the mayor made personal long distance telephone calls on that telephone line during the years in question. The mayor has since reimbursed the city for the personal calls. You seek to withhold the telephone bills, which reveal the telephone numbers called by the mayor, pursuant to sections 3(a)(1) and 3(a)(3) of the Open Records Act.

You contend that the telephone bills should be withheld pursuant to section 3(a)(3) because the mayor has filed suit against the telephone company and a city councilman for invasion of privacy because the telephone company released the telephone bills to the councilman after the mayor had reimbursed the city. Further, you state that the mayor has

threatened to bring suit against anyone else who releases the bills. Section 3(a)(3) of the Open Records Act excepts from required public disclosure information relating to pending or reasonably anticipated litigation, but only if disclosure of the information would adversely affect the governmental body's litigation interests. Open Records Decision No. 493 (1988). To allow, however, section 3(a)(3) to protect information from required public disclosure merely because an individual has threatened a lawsuit if the information is released would eviscerate the purpose of the Open Records Act. See Open Records Decision No. 331 (1982). Moreover, you have not demonstrated how or why disclosure of the requested information would adversely affect the city's litigation interest. You may not withhold the telephone bills pursuant to section 3(a)(3).

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. Id. at 683-85.

This office has previously held that the right of privacy does not protect a public utility's bills. See, e.g., Open Records Decision No. 443 (1986). The rationale for the holding in Open Records Decision No. 443 was that the amount owed by utility customers is a debt to a governmental entity rather than to a private party. That rationale does not, however, apply here, where the billing entity is a private telecommunication corporation.

In Open Records Decision No. 185 (1978), this office held that lists of individuals with whom prison inmates correspond come within the protection of the constitutional right to privacy. See also Open Records Decision No. 430 (1985) (prison inmates' visitor lists protected by constitutional right to privacy). By the same token, this office believes that where, as here, an individual has reimbursed the city for all personal long distance telephone calls he has made on a city telephone line, the telephone numbers called by the individual are of no legitimate public concern and that disclosure of those telephone numbers to the public would result in an invasion of the individual's privacy.

You should therefore withhold from the general public those portions of the account statements that reveal the telephone numbers that reflect the mayor's personal telephone calls. This ruling does not, however, address whether

Mr. Ken Taylor
October 25, 1989
Page 3

the release of the billing statements to the city councilman constitutes an invasion of privacy, except to note that governmental officials may have a special right of access to documents that are not normally available to the general public. See Attorney General Opinion JM-119 (1983).

The remaining information contained in the account statements must be released, as it cannot be said that this information is outside the realm of public concern. The citizens of Portland have a legitimate interest in confirming that the city has actually been repaid for each of the personal long distance calls made by the mayor. Consequently, the length and cost of all of the calls made from the mayor's office must be released, as well as the telephone numbers of those calls made for official purposes. We have marked a representative statement, indicating the information that must be withheld.

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 OR89-339.

Yours very truly,
*Open Government Section
of the Opinion Committee*

Open Government Section
of the Opinion Committee
Approved by David A. Newton
Chief, Open Government Section

DAN/RWP/le

cc: Alice D. Chisholm
118 Sabine
Portland, Texas 78374

ref.: ID# 7632