



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 29, 1989

Mr. John R. Neel
General Counsel
State Purchasing and General
Services Commission
P.O. Box 13047
Capitol Station
Austin, Texas 78711-3047

Dear Mr. Neel:

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# 7553; this decision is OR89-409.

The State Purchasing and General Services Commission has a special role under the Open Records Act in determining the cost for standard-sized photographic copies of public records and the cost of access to public records stored in non-standard forms. V.T.C.S., art. 6252-17a, § 9. You ask several questions about the charges that may be made for copies of public records:

- (1) Under Sec. 9(a), Art. 6252-17a, V.T.C.S., may a governmental body charge a requestor for mere inspection of a standard size public record when there is no request for reproductions (copies) of the record?
- (2) If the answer to Question #1 is yes, may such a charge only be imposed when the governmental body has determined that the record is not readily available?
- (3) If the answer to Question #1 is yes, is the charge to address only the costs associated with deleting non-disclosable information or may it address, generally, all costs of access and production for inspection?

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Section 9 of the Open Records Act does not authorize "access" charges for physical access to the originals of standard-size public records. See Hendricks v. Board of Trustees of Spring Branch Indep. School Dist., 525 S.W.2d 930 (Tex. Civ. App. - Houston [1st Dist.] 1975, writ ref'd n.r.e.) Subsection (a) of section 9 by its terms governs only the cost of copies of standard-sized public records. Subsection (b) of section 9 authorizes "access" charges, but subsection (b) governs only records stored in non-standard formats. Charges for copies of standard-sized public records may include the cost of deleting information deemed confidential by law. Open Records Decision No. 488 (1988). Open Records Decision No. 488 did not address directly the issue of charges for access to original standard-sized public records; the requestor sought copies in that decision.

As a general rule, the Open Records Act gives the requestor the option either to inspect original records or to obtain copies of the records, or both. V.T.C.S., art. 6252-17a, § 4; Open Records Decision No. 152 (1977); see also Open Records Decision No. 38 (1974). If giving the requestor access to original records would give the requestor access to information deemed confidential by law, however, the requestor's option of access must be denied. See Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 687 (Tex. 1976), cert. denied, 430 U.S. 930 (1977) (request for direct computer tie-in denied). Consequently, the concerns that have been addressed to you about the deletion of confidential information when a requestor seeks access to original standard-sized public records may be moot.

The circumstances that amount to giving the requestor access to confidential information must be decided on a case-by-case basis. For example, if a personnel file contains five documents, only one of which is confidential, the other four documents can be inspected easily without revealing the confidential document. The requestor would be entitled to inspect the four original documents and no "access" charge could be levied. If, however, all five documents contained confidential material, the requestor would not be entitled to inspect the originals; he would be limited to obtaining copies. The cost of the copies could include the cost of deleting the confidential information.

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

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published open records decision. If you have questions about this ruling, please refer to OR89-409.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Prepared by Jennifer S. Riggs
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JSR/le

Ref.: ID# 7553

Enclosure: Open Records Handbook
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