



Office of the Attorney General

State of Texas

September 28, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Mike Driscoll
County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR92-559

Dear Mr. Driscoll:

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# 17064.

The Harris County Auditor (the "auditor") has received a request for information regarding compensation to visiting judges who served in the 177th Judicial District Court during the years 1989 through 1992. Specifically, the requestor seeks the amounts paid by the county to the judges as compensation and the amount paid for "expenses including, but not limited to . . . housing, meals, and transportation." You have submitted to us for review representative samples of the records held by the auditor relating to the claims submitted for payment by the visiting judges. You assert that these records constitute "records of the judiciary" and are thus not subject to the Open Records Act. *See* V.T.C.S. 6252-17a, § 2(1)(H).

Previous decisions of this office have addressed whether records in the possession of agencies other than the judiciary are "records of the judiciary." In Attorney General Opinion JM-446 (1986), this office held that the State Purchasing and General Services Commission was an agent of the judiciary in collecting the telephone records of the Texas Supreme Court because it was required by statute, *inter alia*, to obtain the telephone records of state agencies for purposes of analyzing cost effectiveness as a service to the agencies. We held therefore that the telephone records were records of the judiciary and not subject to the Open Records Act. In contrast, in Open Records Decision No. 553 (1990) (copy enclosed), we ordered released wiretapping information held by the Department of Public Safety, since that information was information held by the Department of Public Safety in its own

right and not as an agent of the judiciary. Open Records Decision No. 553 at 3; *cf. Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ).

Section 113.064 of the Local Government Code provides, in pertinent part:

- (a) In a county that has the office of county auditor, each claim, bill, and account against the county must be filed in sufficient time for the auditor to examine and approve it before the meeting of the commissioners court. A claim, bill, or account may not be allowed or paid until it has been examined and approved by the auditor.

See also Local Gov't Code § 112.006(b) (county auditor shall see to strict enforcement of law governing county finances). The county auditor collects and maintains the records at issue here in fulfillment of the auditor's statutory duties, and thus holds the information in its own right and not as an agent of the judiciary. Accordingly, those records are not records of the judiciary and must be released in accordance with the Open Records Act.¹

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 OR92-559.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

¹You have not asserted any exceptions to disclosure under section 3(a) of the Open Records Act. Information concerning the receipt or expenditure of public funds not otherwise made confidential by law is specifically made public by the act. V.T.C.S. art. 6252-17a, § 6(3); *see also id.* § 6(2) (specifically making public the salaries of public officials). We note, however, that 1099 forms fall within the protection of title 26, section 6103(a) of the United States Code, which renders tax return information confidential. *See, e.g.* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms); 226 (1979) (W-2 forms).

CAB/GCK/lmm

Enclosures: Open Records Decision No. 553

Ref.: ID# 17064

cc: Mr. David C. Grant
Filteau, Sullivan & Georgantas, P.C.
7200 Texas Commerce Tower
600 Travis
Houston, Texas 77002
(w/o enclosures)