



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 20, 1993

Mr. Herbert L. Prouty  
El Paso Water Utilities Public Service Board  
1154 Hawking Boulevard  
El Paso, Texas 79925

OR93-468

Dear Mr. Prouty:

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# 19511.

The El Paso Water Utilities Public Service Board ("PSB") received a request for information regarding PSB customers. Specifically, the request is for "the PSB's entire customer database master file . . . as far back as 1976 to present, depending on the cost." You contend that information on some of the customers is excepted from disclosure by section 3(a)(17) of the Open Records Act. If we find that section 3(a)(17) applies to this request, you also ask whether you may charge the requestor for the time and effort it will require to withhold some of the information from disclosure. We address your section 3(a)(17) argument first.

Section 3(a)(17) excepts from disclosure

(A) the home addresses or home telephone numbers of each official or employee or each former official or employee of a governmental body except as otherwise provided by Section 3A of this Act, or peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code.

(B) the home addresses, home telephone numbers, or social security numbers of employees of the Texas Department of Criminal Justice, or the home or employment addresses or telephone numbers or the names or social security numbers of their family members.

Section 3(a)(17) deems peace officers' and the Texas Department of Criminal Justice (TDCJ) employees' home addresses and telephone numbers, TDCJ employees' social security numbers, and TDCJ employees' family members' home addresses, employment addresses, telephone numbers and social security numbers confidential information. See Open Records Decision No. 516 (1989) (Section 3(a)(17) exempts information on peace officers to protect these public employees from harassment related to their occupation). However, we do not think that this confidentiality extends to public employees who are not employees of the governmental agency receiving the request and who are also not peace officers or TDCJ employees. Section 3A(a) provides that public employees must elect in writing whether they want such information open or closed, and section 3A(b) permits public employees to change their election during the course of their employment. See Open Records Decision 530 (1989). However, peace officers or TDCJ employees are not subject to the election requirements of section 3A, so that information about them retains its confidential status. See *id.* We conclude that section 3(a)(17) only prohibits disclosure of home addresses and home telephone numbers of peace officers, TDCJ employees and their families, employment addresses of TDCJ employees' family members, and social security numbers of TDCJ employees and their families. You must therefore delete such information if it is included in the master file containing the customer list data base where it is clear from the information supplied by the customers that he or she is a peace officer, TDCJ employee, or TDCJ employee's family member. Section 3(a)(17) does not prohibit disclosure of information regarding other public employees who are also PSB customers. The remainder of the information is therefore subject to public disclosure.<sup>1</sup>

You also ask whether you may charge the requestor, pursuant to section 9(b), for the computer time, labor and material costs for deleting the confidential information contained within the master computer file. Section 9(b) provides

Charges made for access to public records comprised in any form other than up to standard sized pages or in computer record banks, microfilm records, or other similar records keeping systems, shall be set upon consultation between the officer for public records and the State Purchasing and General Services Commission, giving due consideration to the expenses involved in providing the public records making every effort to match the charges with the actual cost of providing the records. *The costs of providing the record shall be in an amount that reasonably includes all costs related to*

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<sup>1</sup>We note that House Bill 859, which takes effect September 1, 1993, provides for confidentiality of certain information pertaining to customers of a government-operated utility. See H.B. 859, Acts 1993, 73rd Leg. (1993).

*providing the record, including costs of materials, labor, and overhead.* [Emphasis added.]

You may consult with the General Services Commission to establish the costs of providing this information to the requestor pursuant to section 9(b). Open Records Decision No. 488 (1988). In addition, Section 11 of the act permits PSB to require a bond for payment of costs or prepayment "where the record is unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid." Finally, you question whether you must comply with a continuing request to supply information on a periodic basis. The Open Records Act does not require that a governmental body provide information on a periodic basis in order to comply with a standing request. Open Records Decision No. 476 (1987); *see also*, Open Records Decision No. 452 (1986) (A governmental body is not required to provide new information if it did not exist when the original request was made). You are therefore not required to provide to the requestor updates of the information originally requested.

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 contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/JET/jmn

Ref.: ID# 19511  
ID# 19530  
ID# 20895  
ID# 20902

Enclosures: submitted documents

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