



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 2, 1998

Ms. Judy Ponder
General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR98-0318

Dear Ms. Ponder:

You ask whether the General Services Commission ("GSC") must release to a requestor certain long distance telephone billing statements and billing histories under the Open Records Act (the "act"), chapter 552 of the Government Code. You state that the requestor clarified his request to include "information on usage and cost for long distance telephone services for the current fiscal year for each state agency." Your request was assigned ID# 113568.

You have submitted two types of documents as representative samples of the information that is responsive to the request. The first you describe as vouchers created and maintained by GSC for purposes of cost recovery for long distance telephone services. You state that the vouchers are used to invoice the various state agencies for services. The second you say are billing histories created by GSC to inform state agencies of charges incurred for telephone services for fiscal year 1998. You raise no exception to the required public disclosure of the requested telephone billing records. However, you ask whether, in light of Open Records Decision No. 657 (1997) and Attorney General Opinion JM-446 (1986), the act requires the GSC to release the information to the requestor.

Both Open Records Decision No. 657 (1997) and Attorney General Opinion JM-446 (1986) determined that certain GSC-maintained records concerning telephone service to the supreme court are records of the court, not of the GSC. Open Records Decision No. 657 (1997) at 5; Attorney General Opinion JM- 446 (1986) at 4. While reaching different conclusions regarding the application of the judiciary exception, both decisions found the GSC to be the agent of the supreme court in maintaining the particular records at issue. Both opinions ground this agency relationship in the statutory authority of the GSC to manage the

operation of the state's system of telecommunications services for all state agencies. Gov't Code § 2170.051; *see generally* Gov't Code ch. 2170. Open Records Decision No. 657 (1997) concluded further that, as the GSC is not in a position to raise any possible exceptions to public disclosure that the entity which generated the record may want to raise, requests for information held by one entity as the agent of another should be directed to the entity on whose behalf the records are held." Open Records Decision No. 657 (1997) at 5. Thus, you ask whether the requestor must submit his request to every state agency. Essentially, your question requires us to decide whether the GSC must respond to this request for information.

You stress in your letter to this office that the information at issue here is "created" by the GSC. We believe a distinction could be made for information concerning a state agency that was created by GSC. Arguably, such information could be considered to be information that the GSC holds as the proper custodian of the information under the act rather than as an agent of the state entity it concerns.¹ However, we need not decide whether the GSC holds the information at issue here as an agent. Attorney General Opinion JM-446 is limited to the issue of judicial records held by a governmental body subject to the act. Open Records Decision No. 519 (1989) at 2. Furthermore, even assuming the GSC is the agent of each state agency, we do not believe it necessarily follows that the act does not require GSC to respond to the request for the billing records at issue. The existence of an agency relationship need not absolve a governmental body that receives a request of its duties under the act. Gov't Code § 552.203 (duties of officer for public information), .221(a) (requiring officer for public information to "promptly" produce requested public information); .301 (requiring governmental body that receives request for information to ask for attorney general decision), *cf.* Attorney General Opinion H-621 (1975) at 5 (agent with actual control of information may perform duties under act).

Accordingly, we conclude that, in this instance, the GSC must respond to this request for these specific summarized billing records. *See* Open Records Decision No. 519 (1989) (Bexar Metro 911 district must respond to request for information concerning governmental body it serves). In doing so, the GSC may ask each agency whether it has an interest in withholding the requested information. Gov't Code § 552.304 (allowing submission of written comments why requested information should or should not be released); *see* Open Records Decision No. 519 (1989) (Bexar Metro 911 district may assert exceptions on behalf of governmental bodies it serves); Open Records Letter Nos. 97-0952 (1997) (requiring Texas Comptroller to contact state agencies regarding confidentiality of certain warrant information), 96-1020 (1996) (requiring Texas State Treasury to contact state agencies regarding confidentiality of certain warrant information); *see also* Open Records Decision

¹Open Records Decision No. 617 (1993) concluded that while the Records Management Division of the State Library (the "RMD") is the custodian of the records it generates itself, those records not created by the RMD, but transferred to the RMD for purposes of storage, are the records of the originating agency. Open Records Decision No. 617 (1993) at 4.

Nos. 469 (1987), 121 (1976) (relying on litigation interest of another governmental body to permit withholding information under predecessor provision of Gov't Code section 552.103); *but see* Open Records Decision No. 617 (1993) (requiring requestor to direct request for records transferred to and stored at Records Management Division of State Library to originating agency). This office will then determine the applicability of any exceptions raised.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 113568

Enclosures: Submitted documents

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(w/o enclosures)