Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

January 27, 1994

Honorable Kenny Marchant
Chair
Committee on Investments & Banking
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 94-010

Re: Whether a county treasurer must provide access to the actual returned and unpaid checks issued by the county, in lieu of a computer printout listing such checks, when the actual checks are requested under the Open Records Act, Government Code chapter 252, and related questions (ID# 21832)

Dear Representative Marchant:

You have asked the following questions concerning the application of the cost and access provisions of the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.)[1] to certain records held by a county treasurer:

> 1. In accordance with the [act], if a County Treasurer complies with a formal request for review of unpaid County checks by means of providing a current or reasonably current computer printout of such checks, may then the County Treasurer deny the requesting party direct access to the actual returned and unpaid checks?
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> 2. Is the County Treasurer required, if written request is made under the [act] to review unpaid checks or information thereof, to provide space on a daily (emphasis added) basis for a firm or individual requesting that the County Treasurer establish a time and place for 'daily observation' of such items?
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> 3. May the County Treasurer, on behalf of Dallas County, if a request for review is made under the [act], establish a rate or fee for

[1]We note that the 73rd Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

> the time required of Departmental employees to locate, assimilate, and provide such materials to said requestor?
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> 4. If copies are requested of nonpaid checks or other records in accordance with the [act], may the County Treasurer charge for such copies at the rate of $1.00 per page as authorized . . . by the 70th Legislature and effective September 1, 1987?
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> 5. Is the County Treasurer, on behalf of Dallas County, authorized to establish reasonable charges for the provision of information to a "money hunter" or other individual if formally requested under the [act]?

We assume for purposes of this ruling that none of the exceptions apply and that the records are subject to disclosure under the act. We will address your questions in turn.

With respect to question number 1, you ask if the county treasurer may provide a computer printout of the information contained on unpaid county checks in lieu of providing the actual checks. Under these circumstances, a county treasurer must provide the actual checks if they are specifically requested. *See* Open Records Decision No. 606 (1992). If a request for information is made under the act, "[a]n officer for public records of a governmental body shall promptly produce public information for inspection, duplication, or both." Gov't Code § 552.221(a). If the requested information is in active use or in storage, the custodian "shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available." *Id.* § 552.221(b). In addition, section 552.230 of the Government Code provides that a governmental body "may promulgate reasonable rules of procedure under which public records may be inspected efficiently, safely, and without delay." These Government Code provisions, however, generally cannot be used to permanently deny access to records; they may only be used on a temporary basis to avoid an unreasonable disruption of the governmental body's immediate business. Attorney General Opinion JM-757 (1987) at 5; Open Records Decision Nos. 512 (1988); 225 (1979); 148, 121 (1976). *Cf.* Attorney General Opinion DM-146 (1992) (governmental body may limit physical access in the interest of preservation to birth records over 50 years old and death records over 25 years old based on statutory authority and regulations promulgated thereunder). Therefore, if a request is for access to the original unpaid checks, a county treasurer must provide the original checks rather than a computer printout of the information found on the checks.[2] If, however, the requested checks are in active use or in storage, a county treasurer may

[2]A county treasurer and a requestor can always agree that the county treasurer may provide a computer printout of the information. However, in those cases where a requestor does not agree to such a format, the county treasurer must provide access to the original checks. Open Records Decision No. 606 at 3.

temporarily deny access to the original checks until they can be made available without causing an unreasonable disruption of immediate business.

Your second question is whether a county treasurer must provide access on a daily basis, if a request is made under the act to inspect unpaid county checks. A governmental body is not required to comply with a continuing request for information on a periodic basis as it is prepared in the future. Attorney General Opinion JM-48 (1983); Open Records Decision Nos. 476, 465 (1987). Therefore, if a single request seeks access to information on a periodic basis, a county treasurer need not comply with the request as the information is prepared. If, however, the request is for specific information already in existence at the time of the request, a county treasurer cannot deny the request simply because the requestor seeks to review the records on a daily basis. Section 552.225 of the Government Code deals with physical access to public records. Open Records Decision No. 512 (1988). Section 552.225 provides:

> (a) A person requesting public information must complete the examination of the information not later than the 10th day after the date the custodian of the information makes it available to the person.
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> (b) The officer for public records shall extend the initial examination period by an additional 10 days if, within the initial period, the person requesting the information files with the officer for public records a written request for additional time. The officer for public records shall extend an additional examination period by another 10 days if, within the additional period, the person requesting the information files with the officer for public records a written request for more additional time.
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> (c) The time during which a person may examine information may be interrupted by the officer for public records if the information is needed for use by the governmental body. The period of interruption is not considered to be a part of the time during which the person may examine the information.

In addition, section 552.224 provides that "[t]he officer for public records . . . shall give to a person requesting public records all reasonable comfort and facility for the full exercise of the right granted by [the act]." Therefore, a county treasurer must provide access to public records on a daily basis for a minimum of 10 days per request, a minimum of 20 days if the requestor makes a timely request for an extension, and a minimum of 30 days if the requestor properly seeks additional time in writing under section 552.225. The only exception to this requirement is if the records are needed for use; in that case, a county

treasurer may interrupt the time period but must provide additional time to make up for the interruption.

Your third question is whether a county treasurer can charge for the time it takes an employee to provide records for review under the act. We assume that this question is regarding costs for access to public records as opposed to copies because your fourth question is specifically directed to the cost of copies of public records. We also assume that the records do not contain information confidential by section 552.101.

Subchapter F of the Government Code contains the cost provisions, both for copies of and access to public records. Section 552.261 governs the cost that a governmental body may charge for *copies* of records.[3] If a requestor merely seeks *access* to records and the requested information does not contain information that is confidential by law, Section 552.261 does not authorize a charge for access to legal size or smaller records. Attorney General Opinion JM-114 (1983) at 4; *see also Hendricks v. Board of Trustees*, 525 S.W.2d 930, 933 (Tex. Civ. App.--Houston [1st Dist.] 1975, writ ref'd n.r.e.) (concluding that records of legal size or smaller are "the class [of records] for which no charge may be made" for access). Access to public records is unavailable in those cases where the records contain information deemed confidential under the act. Open Records Decision No. 488 (1988) at 6; *see Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687; Attorney General Opinion JM-672 (1987) at 6. In such cases, the governmental body must provide copies of the requested records in lieu of access. Open Records Decision No. 488 at 7-8; *see also* Gov't Code § 552.221 (public records available for "inspection, duplication, or both"). Therefore, assuming that the requested records do not contain confidential information, the county treasurer may not charge for access to the records if they are of legal size or smaller.

If, however, the records are comprised in a form other than standard or smaller sized, then section 552.262 sets forth the cost a governmental body may charge to provide access to the records. Section 552.262 provides:

> The charge for access to public records that are comprised in a form other than standard or smaller sized pages or that are in computer record banks, microfilm records, or other similar record keeping systems shall be set:
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> (1) making every effort to match the charge with the actual cost of providing the record;

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[3] A governmental body may charge a requestor for copies of public records of legal size or smaller, including the cost of materials, labor, and overhead, unless the request is for 50 pages or less of readily available information. *See* Open Records Decision No. 488 (1988).

> (2) after consultation between a governmental body's officer for public records and the General Services Commission; and
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> (3) in an amount that reasonably includes all costs related to providing the record, including costs of materials, labor, and overhead.

The requestor must bear the cost of access to records "corresponding to the actual cost of making the records available for inspection if the records are larger that standard size or if they are maintained in computer record banks, micro-film records, or other similar record keeping systems." *Hendricks*, 525 S.W.2d at 932. Therefore, if the records are larger than legal size or stored in a computer or on microfilm, a county treasurer may charge the "actual cost of providing the record," including "all costs related to providing the record, including costs of materials, labor, and overhead." Gov't Code § 552.262.

Your fourth question is whether a county treasurer may charge $1.00 per page for a copy of "nonpaid checks or other records" pursuant to section 118.141 of the Local Government Code. We conclude that a county treasurer may charge $1.00 per page under this section of the Local Government Code.

Section 118.141 provides in pertinent part:

> The county treasurer, may collect the following fees for services rendered to any person:
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> . . . .
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> (3) Copy of check or other record (Sec. 118.144) $1.00

Section 118.144 further provides:

> The fee for "Copy of check or other record" under Section 118.141 is for each copy made of a page or part of a page of records, orders, checks, or other papers on file or of record in the treasurer's office. The fee applies to both certified and uncertified copies.

As noted above, the cost provisions in Subchapter F of the Government Code normally apply to a request for public records under the Open Records Act. However, where another statute sets a fee for providing copies specific information to the public, that statute prevails over the more general cost provisions of the Open Records Act. Attorney General Opinion MW-163 (1980); Attorney General Opinion H-560 (1975); *see also* Gov't Code § 311.026(b) (if there is a conflict in the express language between two statutes that govern the same subject matter, the specific statute prevails over the general); Attorney General Opinion JM-1137 (1990) (same); Open Records Decision No. 489 (1988) (agency can only charge actual cost of providing a subscriber list where no statute

specifically authorized it to charge more than "actual cost" authorized by the statutory predecessor to section 552.261). Section 118.141 of the Local Government Code therefore prevails over the general cost provisions of the Open Records Act. Thus, a county treasurer may charge $1.00 per copy for records maintained by the county treasurer pursuant to section 118.141 of the Local Government Code.[4]

Your final question is whether a county treasurer may establish reasonable charges to provide information to a "money hunter" or other individual under the act. We have addressed the specific provisions of the act and the Local Government Code that provide for costs of copies and access. We understand this question to more specifically ask whether a county treasurer may treat a request for information from a "money hunter" any differently than any other request under the act. A governmental body is not permitted to ask a requestor the reasons why they are requesting a record beyond establishing the person's identification and the records requested. Gov't Code § 552.222; Attorney General Opinion JM-757 (1987) at 2 ("commercial use for which . . . records are sought is irrelevant to the question of their accessibility and cost to the general public"). Moreover, all requests must be treated equally without regard to a person's occupation or title. Gov't Code § 552.223. Therefore, a county treasurer may not treat a request from a "money hunter" any differently than a request from the general public under the act. Likewise, section 118.141 of the Local Government Code provides no basis for charging a "money hunter" any more or any less than other persons for copies of records held by a county treasurer.

SUMMARY

Under the circumstances of this case, when a requestor seeks access to original unpaid checks under the Open Records Act, a county treasurer must provide the original checks rather than a computer printout of the information found on the checks. A county treasurer must provide access to public records on a daily basis for a minimum of 10 days per request, a minimum of 20 days if the requestor makes a timely request for an extension, and a minimum of 30 days if the requestor properly seeks additional time in writing under section 552.225 of the Government Code. Assuming that the records do not contain information made confidential by section 552.101, a county treasurer may not charge for access to public records up to legal size under the act. If the records are larger than legal size or if they are maintained in computer record banks, micro-

[4]We note that section 118.141 of the Local Government Code is not a mandatory cost provision. A county treasurer may instead choose to rely on the cost provisions of the Open Records Act.

film records, or other similar record keeping systems, the requestor must bear the cost of access to the records. The actual cost of providing access to other than up to legal size records includes all costs related to providing the records, including costs of materials, labor, and overhead. If a request is made for a copy of a record maintained by a county treasurer, the county treasurer may charge $1.00 per copy pursuant to section 118.141 of the Local Government Code. A county treasurer may not treat a request from a "money hunter" any differently than a request from the general public under the act or under section 118.141 of the Local Government Code.

Yours very truly,

Loretta DeHay

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