



**THE ATTORNEY GENERAL
OF TEXAS**

October 27, 1986

**JIM MATTOX
ATTORNEY GENERAL**

Mr. David W. Reagan
City Attorney
P. O. Box 1152
Midland, Texas 79702

Open Records Decision No. 445

Re: Whether the Open Records Act article 6252-17a, V.T.C.S., requires a city to obtain and disclose information collected and maintained by an outside consultant with whom the city contracted

Dear Mr. Reagan:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S. Your request letter states:

In January of 1986, the city of Midland contracted with Cresap, McCormick & Paget, a consulting firm, for the latter to do a management study of the city of Midland Police Department. Under the terms of the contract, Cresap, McCormick & Paget was to prepare and turn over to the city of Midland a comprehensive written report of their findings and recommendations. The consulting firm fulfilled its contractual obligations by making the report available to the city. The city, in turn, has made that report available for public inspection. Both the contract and the report are enclosed.

The city of Midland has now received a request, a copy of which is enclosed, for the 'notes, investigations, and information acquired in regard to the approximately 125 persons who were interviewed' by Cresap, McCormick & Paget in the preparation of its report. The city of Midland does not have that information, does not know the contents of such information, and is not contractually entitled to receive the same. By letter dated July 25, 1986, a copy of which is enclosed, Cresap, McCormick & Paget has stated they would not voluntarily release this information for the reasons that they considered the information to be their sole property and that the city of Midland

had no right, contractual or otherwise, to the information.

You have asked if the city must obtain and produce this information. We answer in the negative. This makes it unnecessary to address the other questions raised in your request letter.

Section 3(a) of the act provides that "information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information. . . ." Prior decisions establish that information submitted to governmental entities by outside consultants hired by those entities is within this section. Open Records Decision Nos. 335 (1982); 192 (1978). We recently held, moreover, that if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent has been assembled or maintained by the entity for section 3(a) purposes. Open Records Decision No. 437 (1986). The present situation, however, is distinguishable from these situations.

There is in this instance no dispute about whether the final report submitted to the city by its consultant is subject to required disclosure. Indeed, you have stated that the city has made this report available for public inspection. This is also not a situation in which the city employed an agent to perform a task that the city itself would otherwise have been obligated to perform, or in which the consultant actually prepared the information in question at the request or under the direction of the city. Were this the case, Open Records Decision No. 437 would be on point. Finally, this is not a case involving a governmental entity that assembled information and then gave that information to an outside entity in order to circumvent the disclosure requirements of the act. On the contrary, you have stated that the contract between the city and its consultant called for the city to receive only a "comprehensive written report," that the city never possessed the requested information, that it does not know the contents of that information, and that it "is not contractually entitled to receive the same."

Under all of these circumstances, we do not believe that the requested information can be deemed to have been "collected, assembled, or maintained by [the city]" within the meaning of section 3(a). It is therefore not subject to required disclosure. We emphasize that our holding is a narrow one confined to the particular facts of this case.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly slanted style. The first letter "J" is large and loops around the "i". The "M" is also large and loops around the "a". The "T" is tall and thin, and the "x" is a simple cross.

JIM MATTOX

Attorney General of Texas

JACK HIGHTOWER
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Chairman, Opinion Committee

Prepared by Jon Bible
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