



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 11, 1996

Honorable Barry S. Green
District Attorney
Jack & Wise Counties
Wise County Courthouse, Suite 200
Decatur, Texas 76234

Letter Opinion No. 96-0002

Re: Whether, under the Open Records Act, Gov't Code ch. 552, a governmental body that received a request prior to September 1, 1995, may charge the requestor for access to information comprised of pages that are legal size or smaller and related question (ID# 29925)

Dear Mr. Green:

You ask that we determine the costs you may properly charge a requestor for access to information under the Open Records Act, Gov't Code ch. 552, in two scenarios. Subchapter F of chapter 552 pertains to the cost of providing requested information. Sections 552.261 and 552.262 state in relevant part as follows:¹

§ 552.261. Determining Cost of Copies

....

(b) The cost of obtaining a standard or legal size photographic reproduction shall be an amount that reasonably includes all costs related to reproducing the record, including costs of materials, labor,

¹We note that the Seventy-fourth Legislature amended sections 552.261 and 552.262 of the Government Code. See Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 16-17, 1995 Tex. Sess. Law Serv. 5127, 5136-37; *infra* note 2 (describing amendments); see also *infra* note 8. Pursuant to section 26 of the enacted bill, however, these amendments "apply only to a request for information that is received by a governmental body on or after September 1, 1995. A request for information that is received by a governmental body before that date is governed by the law in effect at the time the request is made." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142. Because the request you received was made prior to September 1, 1995, see *infra* note 3, we need not consider the amendments to sections 552.261 and 552.262.

and overhead, unless the request is for 50 or fewer pages of readily available information.

....

§ 552.262. Cost for Nonstandard Records

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:

(1) making every effort to match the charge with the actual cost of providing the record;

(2) after consultation between a governmental body's officer for public records and the General Services Commission; and

(3) in an amount that reasonably includes all costs related to providing the record, including costs of materials, labor, and overhead.² [Footnote added.]

²As amended by the Seventy-fourth Legislature, section 552.261 of the Government Code provides as follows:

The cost of obtaining a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead. If a request is for 50 or fewer pages of paper records, the charge of the public information may not include costs of materials, labor, or overhead, but shall be limited to the photocopying costs, unless the pages to be copied are located in:

- (1) more than one building; or
- (2) a remote storage facility.

Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 16, 1995 Tex. Sess. Law Serv. 5127, 5136; *see supra* note 1.

As amended, section 552.262(a) of the Government Code requires the General Services Commission to adopt rules for use by "each governmental body" in determining charges under chapter 552. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 17, 1995 Tex. Sess. Law Serv. 5127, 5136; *see supra* note 1. A governmental body other than a state agency may determine its own charges for producing public records, but its charges may not vary more than 25% from the General Service Commission's rules. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 17, 1995 Tex. Sess. Law Serv. 5127, 5136.

In the first scenario you describe, you aver that the Wise County Sheriff's Office has received a request for "[a]ll reports submit[t]ed by any and all Deputy Sheriff's personnel concerning their daily activities, to include any reports concerning arrests made and the circumstances surrounding those arrests for a period beginning January 1, 1992 to the date of this request."³ You contend that the responsive records are voluminous and difficult to retrieve:

[T]o comply with the request for "daily activity" reports as far back as 1992 would require the records to be retrieved from a warehouse (not climate controlled) on the property of the Sheriff's office. The records are currently stored in boxes stacked as high as nine feet. The transporting of some twenty boxes, each weighing as much as fifty pounds, would be required giving rise to a total of four man hours of labor. . . .

. . . . [T]he arrest reports are stored at the Sheriff's office, [but] each is contained in a file designated for a single inmate. That is, if an inmate has been arrested fifteen times, there would be fifteen arrest reports in one file. However, the files also contain voluminous information about each inmate including . . . medical, grievances, dental, disciplinary measures, classification, requests, property, mail logs, visitors, and trustee information. . . . [T]here are over 5,000 inmate files. To retrieve the arrest reports, each file will have to be reviewed page by page to locate the arrest report.

You do not suggest that any of the information at issue in the first scenario is confidential by law. We therefore assume none of the information is confidential.

The plain language of the act authorizes a governmental body to charge for access to requested information only if the information is comprised of pages larger than legal size or if the information is stored in computer record banks, microfilm records, or other similar record keeping systems. If the information is comprised of pages that are legal size or smaller and the public information is not mixed with information confidential under section 552.101 of the Government Code, the governmental body may not charge for mere access to the information.⁴ See *Hendricks v. Board of Trustees*, 525 S.W.2d

³You indicate the Wise County Sheriff's Office received the request on October 10, 1994.

⁴Section 552.262, of course, authorizes a governmental body to include in the cost of providing access to nonstandard size documents or to information stored on a computer or microfilm "costs of materials, labor, and overhead." *But see id.* at 5136-37 (amending Gov't Code § 552.262). You state that, in this case, retrieving the requested information is far more onerous than retrieving information stored on a computer. You appear to suggest that, because retrieval of the requested information demands so much

930, 932-33 (Tex. Civ. App.--Houston [1st Dist.] 1975, writ ref'd n.r.e.); *see also* Attorney General Opinion JM-292 (1984) at 5-6. The act does not distinguish between access to records that a governmental body easily may retrieve and access to those not easily retrieved.

You have informed us that the information requested is comprised of pages that are legal size or smaller. Moreover, you have not questioned the availability under the act of the requested information. Accordingly, we must conclude the county may not charge the requestor for access to the requested information.⁵

In the second scenario, the Wise County Sheriff's Office has received a request for "[a]ll personnel files of all Deputy Sheriff personnel hired or otherwise employed on or after January 1, 1992" and for "[a]ll complaints against any and all Sheriff's deputies from any citizen . . . for a period beginning January 1, 1992 to the date of this request." You assert that the county may withhold some of the requested information from required public disclosure.⁶ You state the sheriff has determined that "the only feasible way to comply with the request is to extract the exempted information from a document by blocking out or covering the protected area(s)" and copying the protected document. You ask whether, in such a situation, the county may charge the requestor as if he or she had requested copies even though the requestor seeks only to inspect the requested information. We also understand you to ask whether the county may refuse a requestor who wishes to access information for the purpose of copying it on his or her own copier.⁷

When a requestor seeks a record, portions of which contain information that is confidential under section 552.101 of the Government Code, "the option of access is not available." Open Records Decision No. 488 (1988) at 6. Instead, the governmental body must prepare redacted copies in lieu of giving the requestor access to the original records.

(Footnote continued)

of the governmental body, the governmental body should be able to charge for access to the information. In the act, however, the legislature has determined that providing access to information comprised of standard size or smaller pages does not warrant a charge to the requestor.

⁵You appear to assume that the requestor seeks only to inspect the information. We note, however, that the requestor seeks the requested information "for . . . inspection and/or copying."

⁶We do not in this letter opinion consider whether the county may withhold any of the requested information from required public disclosure.

⁷Again, your questions assume the requestor seeks only to inspect the requested information, not to copy or obtain copies of it. Both of the request letters at issue, however, seek the requested information "for . . . inspection and/or copying."

The governmental body may treat the request as a request for copies under section 552.261 of the Government Code if the information is comprised of pages that are legal size or smaller. *Id.* at 7-8. Of course, section 552.261 authorizes the governmental body to charge the requestor for material and labor costs incurred in preparing copies of information comprised of pages that are legal size or smaller, unless the requestor seeks fifty or fewer pages of readily available information. Thus, in the scenario you describe, the county may consider the request as one seeking copies of the information and may impose charges in accordance with section 552.261 of the Government Code.⁸

In connection with your final question about the second scenario, whether the county may refuse a requestor who wishes to access information for the purpose of copying it on his or her own copier, you cite Attorney General Opinion JM-757 (1987). In that opinion this office concluded that a governmental body may deny a member of the public's request to copy, with his or her own copying equipment, public information in certain circumstances. Attorney General Opinion JM-757 (1987) at 5. The opinion explicitly stated that it considered a requestor's right to copy, on his or her own copier, only purely public information; it did not consider a requestor's right to copy, on his or her own copier, information containing information that is confidential by law. *Id.* at 1-2.

Attorney General Opinion JM-757 (1987) does not pertain to the situation Wise County faces because, as you have told us, the requested information contains some information that is confidential under section 552.101 of the Government Code. Where the requested information contains some such confidential information, we do not believe the governmental body may provide the requestor with access to the information so that the requestor may copy the information on his or her own copier. Rather, as we have concluded above, the governmental body may treat the request as a request for copies under section 552.261.

⁸The Seventy-fourth Legislature enacted section 552.271 of the Government Code, which provides for the inspection of a paper record where the requestor does not seek a copy of the record. *See id.* at 5138. Section 552.271 prohibits a governmental body from imposing a charge to make available "for inspection any public information that exists in a paper record," unless the requested record contains confidential information that the governmental body must edit from the record before it may release the record. *Id.* In that event, "the governmental body may charge for the cost of making a copy of the page from which information must be edited." *Id.* The governmental body may not impose any other charges. *Id.*

S U M M A R Y

Our conclusions apply only to a request for information that a governmental body received prior to September 1, 1995. The Open Records Act, Gov't Code ch. 552, does not permit a governmental body to charge a requestor for access to information comprised of pages that are legal size or smaller and that do not contain confidential information, regardless of the degree of difficulty involved in retrieving the information.

A governmental body may treat a request for information, portions of which consist of confidential information, as a request for copies. The governmental body thus may levy charges in accordance with section 552.261 of the Government Code if the information is comprised of pages that are legal size or smaller.

Where a member of the public seeks access to information, portions of which are confidential, so that the requestor may copy the information on his or her own copier, the governmental body must not comply. Rather, the governmental body must treat the request as one for copies.

Yours very truly

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge". The signature is fluid and cursive, with the first name being the most prominent.

Kimberly K. Oltrogge
Assistant Attorney General
Open Records Division