



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 13, 1997

The Honorable Sandy S. Gately
52nd Judicial District Attorney
P.O. Box 919
Gatesville, Texas 76528

OR97-1092

Dear Mr. Gately:

You ask certain questions about the availability of information under chapter 552 of the Government Code. Your request was assigned ID# 35851.

You ask this office two questions concerning when records of a governmental body must be made available and where these records must be made available. Specifically you seek an opinion

regarding the time limit within which open records must be made available following a request, and whether there is a requirement that said records be made available in the political subdivision from which they were requested.

Initially, we note that disputed questions of fact are not resolvable in the open records process, and therefore, the attorney general is unable to resolve the specific questions of fact in this instance. Open Records Decision Nos. 554 (1990), 552 (1990); see Gov't Code § 552.353(a) (it is an offense, if with criminal negligence, officer withholds public information). We will, however, outline the time and availability requirements of the act.

The Open Records Act outlines a governmental body's responsibility to provide public information. Section 552.221 states that

(a) An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on the application by any person to the officer.

(b) An officer for public information complies with Subsection (a) by:

(1) providing the public information for inspection or duplication in the offices of the governmental body; or

(2) sending copies of the public information by first class United States mail if the person requesting the information requests that copies be provided by mail and agrees to pay the postage.

(c) If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

(d) If an officer for public information cannot produce public information for inspection or duplication within 10 calendar days after the date the information is requested under Subsection (a), the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

Generally, therefore, a governmental body has 10 days in which to produce the requested documents. Furthermore, Section 552.228 provides that

(a) It shall be a policy of a governmental body to provide a suitable copy of public information within a reasonable time after the date on which the copy is requested.

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if

(1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;

(2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

(c) If a governmental body is unable to comply with a request to produce a copy of information in a requested medium for any of the reasons described by this section, the governmental body shall provide a paper copy for the requested information or a copy in another medium that is acceptable to the requestor. A governmental body is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

Section 552.225 of the Open Records provides for the timely examination of requested information. Section 552.225 provides as follows:

(a) A requestor must complete the examination of information not later than the 10th day after the date the custodian of the information makes it available to the person.

(b) The officer for public information shall extend the initial examination period by an additional 10 days if, within the initial period, the requestor files with the officer for public information a written request for additional time. The officer for public information shall extend an additional examination period by another 10 days if, within the additional period, the requestor files with the officer for public information a written request for more additional time.

(c) The time during which a person may examine information may be interrupted by the officer for public information 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.

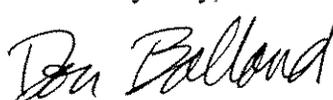
Consequently, if a requestor chooses to inspect public records, the requestor must complete the inspection within ten days after the date the governmental body makes the information available. Open Records Decision No. 512 (1988). Given, of course, that the requestor may extend the inspection time as outlined in the statute. Gov't Code § 552.225(c).

If, on the other hand, a copy of the information is requested, a governmental body must produce the duplicates within 10 days of the request as stated in section 552.221(d) or within a "reasonable time" if certified in writing to the requestor. The governmental body must, therefore, mail the duplicates to the requestor within ten days of receiving the request if the person requesting the information requests that copies be provided by mail and agrees to pay the postage. Gov't Code §§ 552.221(a), .221(d). If, however, the requestor wishes to retrieve the duplicate copies from the governmental body, we believe that the governmental body must hold the copies for the requestor for a "reasonable time." *Cf.* Gov't Code § 552.225(a). What constitutes a reasonable period of time depends on the facts in each case. *See* Open Records Decision No. 467 (1987) at 6. Yet, we believe that a reasonable amount of time to hold the duplicates can be no fewer than ten days after the

governmental body informs the requestor that the duplicates have been prepared. *See* Gov't Code § 552.225(a); *but see* Open Records Decision No. 512 (1988) (statutory predecessor to section 552.225 did not apply to requests for copies of public information).

We will now address your question as to where public information must be made available. Section 552.221(b)(1) states that a governmental body complies with a request for information when it provides "the public information for inspection or duplication in the offices of the governmental body;" or sends copies by mail. Moreover, section 552.021 provides that "public information is available to the public at a minimum during the normal business hours of the governmental body." Given these provisions, we believe that a governmental body must allow for access or inspection of public information at the offices of the governmental body. *See Conley v. Peck*, 929 S.W.2d 630, 632 (Tex. App.--Austin 1996, no writ) (Open Records Act requires information officer to make records available in offices of governmental body). Thus, if a particular political subdivision, from which the requestor sought records, collects, assembles, maintains, owns or has a right of access to the information sought, the political subdivision must allow for inspection of that information in its offices. Gov't Code § 552.002. If you have questions about this letter, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 35851

cc: Mr. Frank A. DiMuccio, Jr.
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