



October 23, 2000

Ms. Paula A. Jones
General Counsel
Texas Employees Retirement System
P.O. Box 13207
Austin, Texas 78711-3207

OR2000-4101

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 140767.

In connection with an appeal by the requestor before the State Office of Administrative Hearings and to which the Employees Retirement System of Texas (the "ERS") is a party, the ERS received a request for "the percentage of times" the Administrative Law Judges rule for the appellant. You state:

[The] ERS does not maintain the kind of statistic the requestor seeks. Furthermore, [the] ERS does not believe that it is required, pursuant to [the Act] to answer general questions, nor does [the] ERS believe it is required to create a document not already in existence. . . . It is the ERS' contention that, since no written document exists in connection with information sought by the requestor, the ERS is not required to create such a document.

You accordingly have not submitted for our review any information that is responsive to the request. *See* Gov't Code § 552.301(e)(1)(D). Alternatively, you assert that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you assert and your comments and arguments.

It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. Thus, this office has long held that the Act does not require a governmental body to prepare new information in order to respond to a request. Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). The Act therefore does not require a

governmental body to prepare new information in order to answer questions. Open Records Decision No. 555 at 1-2 (1990). We thus agree with your assertion that the ERS is not required by the Act to prepare new information in order to answer the question that has been posed by the requestor.

However, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 at 8 (1990). Indeed, if the information that is being requested is unclear to the governmental body, the Act specifically permits the governmental body to ask the requestor to clarify the request. See Gov't Code § 552.222(b). Further, where the governmental body is presented with a broad request for information, we have stated that the governmental body may advise the requestor of the types of information available so he may properly narrow his request. Open Records Decision No. 31 (1974); *see also id.* In this instance, we therefore believe that ERS may advise the requestor of the types of information held by ERS which may be responsive to her inquiry.¹ Because you have essentially represented to this office that ERS does not maintain the kind of record the requestor seeks, and because we agree that ERS is not required to create information that would be responsive, we do not address the section 552.103 assertion.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

¹We assume, for example, that ERS maintains copies of the individual decisions of the Administrative Law Judges, which would each indicate the ruling and whether the appellant prevailed. If so, such records may be subject to required disclosure. See Gov't Code § 552.022(a)(12), (17). ERS should thus advise the requestor as to the availability of this type of record.

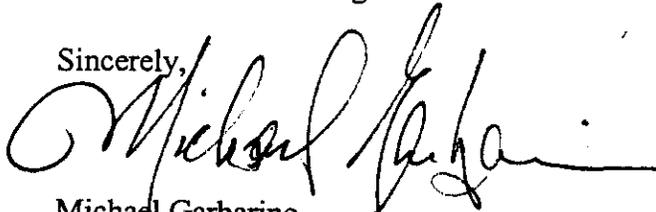
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 140767

Encl. Submitted documents

cc: Ms. Patricia K. Corbett
10950 Woodmeadow Pkwy., Apt. 124
Dallas, Texas 75228
(w/o enclosures)