



April 8, 2002

Mr. Alan J. Bojorquez  
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR2002-1728

Dear Mr. Bojorquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160272.

The City of Slaton (the "city"), which you represent, received a request for

1. A list of any and all e-mail addresses issued or otherwise obtained by any member of the Slaton Police Department, which is purchased or paid for by the City of Slaton.
2. Server logs showing the date and time that a member signed onto a particular ISP and the length of time that member was connected. I request this information for a period of one year preceding today's date.
3. A copy of all e-mails sent to or from a city owned or provided e-mail account for a period of 1 year preceding today's date.

You state that you have provided the requestor with information responsive to item one of this request. You further state that you have requested clarification as to item three of this request and are awaiting the requestor's response. You claim, however, that the information responsive to item two of the request is not "public information" subject to the Public Information Act (the "Act"). We have considered your arguments and those submitted by the Texas Municipal League. See Gov't Code § 552.304 (providing for submission of public comments).

Section 552.222(b) of the Government Code provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. This office previously has held that a request "must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request." Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); *see also* Open Records Decision No. 304 (1982). You state that the city asked the requestor to clarify item three of his request for information. Thus, the ten-business-day time period to request a decision under section 552.301(b) with respect to item three of the request was tolled on the day you sought clarification from the requestor. *See* Gov't Code § 552.301(b); Open Records Decision No. 663 at 5 (1999) (providing that ten-day period is tolled during the clarification process). You indicate that the requestor has not yet clarified item three of his request for information. Thus, the city need not respond to item three of the request until it receives the requestor's clarification. We note, however, that when the city receives the clarification, the city must seek a ruling from this office before withholding any of the information that may be responsive to the request. *See* Open Records Decision No. 663 (1999).

We will now address your arguments with respect to item two of the request. You argue that the information requested in item two is not "public information" subject to the Act because the city does not have such information and has not been able to access such information. The Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Section 552.002 of the Government Code, however, defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990). Moreover, 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 is subject to disclosure. Open Records Decision No. 518 (1989).

You explain that the requested server logs are not collected, assembled, or maintained by the city. Rather, this information is maintained by the city's internet service provider. You further explain that the city did not ask its internet service provider to collect, assemble, or maintain such information on its behalf. You indicate that the city's internet service provider maintains server logs for its own purposes. Based on these representations, we agree that the city's internet service provider does not collect, assemble, or maintain the requested server

logs for the city. *See* Gov't Code § 552.002. Accordingly, we conclude that the requested server logs maintained by the city's internet service provider are not subject to disclosure under the Act.

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; 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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 160272

c: Mr. Eric Karr  
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