



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2007

Mr. Leonard E. Merrell, Ed. D.
Superintendent
Katy Independent School District
P.O. Box 159
Katy, Texas 77492-0159

OR2007-09086

Dear Mr. Merrell:

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# 284176.

The Katy Independent School District (the "district") received a request for any and all e-mails during a specified time period between a specified individual and members of the district's communications department regarding the bond initiative. You state that you have provided the requestor with all the e-mails the district believes are responsive to his request. However, you claim that a portion of the requested e-mail correspondence is no longer in the possession of the district and is therefore not subject to disclosure under the Act. We have also considered comments submitted by an interested third-party. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address your contention that the requested e-mail messages at issue do not exist. The Act does not require a governmental body to disclose information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You indicate that the district does not possess printed copies of some of the requested e-mail messages. You have submitted an affidavit from the Deputy Superintendent for Information and Technology Services of the district who states that all e-mail servers were checked, but could not locate the e-mails at issue. Thus, you state that to the extent the e-mail messages exist as computer files, they may be recorded on the tape backup system maintained by the district for disaster recovery or data restoration purposes only.

In general, computer software programs keep track of the location of files by storing the location of data in the "file allocation table" (FAT) of a computer's hard disk. The software then displays the file as being in a specific storage location. Usually, but not always, when a file is "deleted," it is not actually deleted, but the display of the location is merely shown to be moved to a "trash bin" or "recycle bin." Later, when files are "deleted" or "emptied" from these "trash bins," the data is usually not deleted, but the location of the data is deleted from the FAT. Some software programs immediately delete the location information from the FAT when a file is deleted. Once the location reference is deleted from the FAT, the data may be overwritten and permanently removed.

As noted, you inform us that a portion of the requested e-mail messages are contained on the district backup tapes. We understand you to state that the e-mail messages are not maintained on the hard drives of the computers at issue. You further explain that to restore the information at issue, it would require the district to implement a new search process, including additional hardware and software beyond the current infrastructure. Based on your representations that the e-mail messages have been deleted and are no longer maintained by the district for the purposes of transacting official district business, we find that the locations of the files have been deleted from the FAT system. We therefore determine that the e-mail messages at issue were no longer being "maintained" by the district at the time of the request, and are not public information subject to disclosure under the Act. *Econ. Opportunities Dev. Corp*, 562 S.W.2d at 266; *see also* Gov't Code §§ 552.002, 552.021 (public information consists of information collected, assembled, or maintained by or for governmental body in connection with transaction of official business). Accordingly, we conclude that the Act does not require the district to release the requested e-mail messages at issue in this instance.

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, upon receiving this ruling, the governmental body

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 284176

Enc. Submitted documents

c: Mr. A.D. Muller
24106 Falcon Point Drive
Katy, Texas 77494
(w/o enclosures)