



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2007

Mr. Phillip A. McKinney  
P. A. McKinney & Associates  
P.O. Box 2747  
Corpus Christi, Texas 78403

OR2007-11963

Dear Mr. McKinney:

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# 289020.

The Coastal Bend College District (the "college"), which you represent, received a request for email communications on copies of DVDs that pertain to two named individuals and specified employment and budgetary information.<sup>1</sup> You state that the college does not have the requested information.

The Act authorizes the Office of the Attorney General to render decisions and opinions in two situations. The first occurs when a governmental body receives a written request for information from an individual or entity acting as a member of the public and requests a ruling from this office because the governmental body wishes to withhold responsive information in accordance with one of the Act's exceptions to disclosure. *See id.* §§ 552.301, 552.306. The second situation occurs when this office issues "materials, including detailed and comprehensive written decisions and opinions, that relate to or are based on [the Act]" in order to "maintain uniformity in the application, operation, and interpretation of [the Act.]" *Id.* § 552.011.

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<sup>1</sup>We note that, on May 17, 2007, the requestor first sent a request for information to a private attorney representing the college by facsimile transmission; however, you inform us that this attorney is not the college's officer for public information. For requests made by facsimile transmission, the Act's disclosure requirements are not triggered unless the request is sent to a governmental body's officer for public information or the person designated by that officer. *See Gov't Code* § 552.301(c). Accordingly, the May 17 communication to the private attorney did not trigger the requirements of section 552.301 for the college. However, we find that the requestor's communication to the college on June 4, 2007 was a request for information under the Act, and thus this request triggered the college's requirements under the Act. *See Gov't Code* § 552.301(a).

You inform us that a former employee of the college allegedly copied e-mail communications of the college's personnel director onto DVDs, which he then removed and ultimately filed with the registry of the Jim Wells County district court in a receivership proceeding. The college states that the e-mail communications the requestor seeks are "mixed in with thousands of other non-responsive e-mails on two DVDs." Similarly, in correspondence to this office, the requestor's attorney informs us that an initial request for information made to a private attorney representing the college included "certain documents stored on the aforementioned DVDs." Finally, correspondence between the college and the requestor that the college submitted to this office demonstrates that the requestor is seeking information on the DVDs. Thus, based on the representations of the college and the requestor and our review of the submitted documents, we understand that the requested information is limited to the copies of the DVDs that were filed with the district court and the information on the DVDs themselves. You state that, on the date the college received the request for information, it neither had possession of the DVDs nor a right of access to them. Thus, based on your representation that the college did not have information responsive to the request for information when it received the request, we conclude that this situation falls outside of the Act and beyond the scope of this office's authority to render a decision regarding your request. The college is thus not required to release any information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). We therefore consider this matter closed. If you have any questions with regard to this letter, please refer to ID# 289020.

Sincerely,

  
James E. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jh

Ref: ID# 289020

Enc. Submitted documents

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