



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2009

Mr. K. Jefferson Bray
Police Legal Advisor
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2009-01553

Dear Mr. Bray:

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# 335304.

The Plano Police Department (the "department") received a request for documents reflecting any accommodations made to a disabled former department employee or any other similarly situated department employee over the last ten years. You state that the department has released some "arguably responsive information" to the requestor. You assert that the remaining requested information, to the extent it exists, is not subject to the Act.¹ We have considered your arguments as well as comments submitted to this office by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You state that any responsive information beyond what the department has already released exists only as e-mail messages stored remotely on the department's backup tapes.² In

¹We note that the department has withdrawn, by letter dated December 17, 2008, its previously asserted arguments that the request was invalid and that the information at issue is excepted from disclosure under section 552.103 of the Government Code.

²The 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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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.

You inform us that the City of Plano's policy is to keep thirty days of e-mail on the city's servers. E-mails more than thirty days old are deleted and not maintained on the user's hard drive, unless the user personally archives the e-mails. We understand you to state that the e-mail messages at issue are contained only on the department's backup tapes. You state that to restore the information at issue, the department would be required to load backup tapes and restore the post office data contained on each tape. Based on these representations, we determine that the locations of the computer files at issue have been deleted from the FAT system. We therefore find that any e-mail messages at issue that were more than thirty days old at the time of the request were no longer being "maintained" by the department at the time of the request, and are not public information subject to disclosure under the Act.³ *See 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, in this instance, the Act does not require the department to release any responsive e-mail messages that were stored remotely on the department's backup tapes on the date of the present request.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

³You state that the department received the initial request for information on November 11, 2008, and subsequently asked the requestor to clarify his request on November 20, 2008. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You inform us that the department received clarification on November 24, 2008, and we therefore treat this as the date of the present request. *See* Gov't Code § 552.301(b); Open Records Decision No. 663 at 5 (1999) (ten-day deadline under section 552.301(b) is tolled during process but resumes, upon receipt of clarification or narrowing response, on day clarification is received).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "R. T. Mitchell". The signature is stylized with a large initial "R" and "M".

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 335304

cc: Requestor
(w/o enclosures)