



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2009

Ms. Karen McNair  
Assistant County Attorney  
Liberty County  
P.O. Box 9127  
Liberty, Texas 77575-9127

OR2009-04411

Dear Ms. McNair:

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# 338961.

The Liberty County Treasurer's Office (the "treasurer") received a request for (1) a list of all retired persons currently receiving health insurance benefits through the county, including name, department worked for, date of retirement, length of employment at time of retirement, and years of service with a compatible retirement system and (2) the minutes from a specified Commissioner's Court meeting.<sup>1</sup> You state the treasurer does not maintain the requested information. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.002(a) of the Government Code defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with

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<sup>1</sup>By letter, you have informed the requestor the treasurer is not the custodian of the minutes of the Commissioner's Court meeting and from whom such information may be obtained. The Act does not require a governmental body to release 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).

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.” Gov’t Code § 552.002(a). A governmental body is not required to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Further, the Act does not require a governmental body to take affirmative steps to obtain information that is not in its possession. *See Gov’t Code § 552.002(a)*; Open Records Decision No. 518 at 3 (1989). However, information in the possession of another entity may nevertheless be subject to the Act if the entity holds the information for the governmental body or if the governmental body owns or has a right of access to the information. *See Gov’t Code § 552.002(a)*. However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See Open Records Decision No. 561 at 8-9 (1990)*.

You state the treasurer does not regularly and routinely maintain the requested information. You also state the treasurer has no current documents from which the requested information can be ascertained. You explain in order to obtain the requested information, the treasurer would have to make an inquiry to the Texas County and District Retirement System (the “system”). The system does not collect, assemble, or maintain the information at issue on behalf of the treasurer. The system maintains such information in the performance of its duties. *See Gov’t Code §§ 845.001-.507*; *see also Open Records Decision No. 534 (1989)* (Texas Department of Corrections does not maintain files for Texas Commission of Human Rights). Based on your representations, we find the requested information is not collected, assembled, or maintained by the treasurer for the purposes of the Act. Further, the treasurer is not required to obtain this information to comply with the Act. *See Gov’t Code § 552.002(a)*. We note, however, you have submitted information you inform us was received from the system in 2007 for the treasurer’s use in an unrelated matter. As the treasurer has made a good faith effort to relate the instant request to information that is within its possession and control, we will address the treasurer’s argument against the disclosure of the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 845.115 of the Government Code provides in relevant part:

- (a) Information contained in records in the custody of the retirement system or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the retirement system concerning a participant is confidential. Except as otherwise provided by this section, the retirement system is not required to accept or comply with a request for a record or information about a record of

a participant or to seek an opinion from the attorney general because the records of a participant are exempt from the public information provisions of Chapter 552 [of the Government Code]. The information may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the participant or the participant's attorney, guardian, executor, administrator, conservator, or other person who the director determines is acting in the interest of the participant or the participant's estate;

(B) a spouse or former spouse of the participant and the director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee and the director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

(D) a person authorized by the participant in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the director determines that the participant will have a reasonable opportunity to contest the subpoena.

*Id.* § 845.115(a). Section 845.115 makes confidential records of a participant in the system's retirement program that are in the system's custody or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the system. *Id.* Participant is defined as "a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system." *See id.* §§ 845.114(a), 845.115(f). The information at issue consists of information obtained from the system concerning retirees and appears to be maintained by the treasurer in cooperation with the system. You have submitted correspondence from the system specifically stating the submitted information was provided to the treasurer to "assist [the treasurer] in performing [its] official duties." Therefore, we find the treasurer maintains the submitted information in cooperation with the system. Further, you indicate the treasurer has not otherwise been authorized to release the information. *See id.* § 845.115(a). The requestor is not a person to whom disclosure is permitted under section 845.115. Accordingly, the submitted information is

confidential under section 845.115 of the Government Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code.<sup>2</sup>

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

Sincerely,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 338961

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.