



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2009

Ms. Diane Evans
City Secretary
City of Bartlett
P.O. Drawer H
Bartlett, Texas 76511

OR2009-06306

Dear Ms. Evans:

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# 342788 (BPD ORRs 2009-0217-01 and 2009-0225-01).

The Bartlett Police Department (the "department") received two requests from the same requestor for ten categories of information related to the department's computer systems. You state the department has released information responsive to category two to the requestor. You also state the department does not have information responsive to some of the requested categories.¹ You claim some of the responsive information is not subject to the Act.² We have considered your arguments and reviewed the submitted representative

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *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).

²Although you also raise section 552.108 of the Government Code for a portion of this information, because you state this information does not exist, we do not address the applicability of section 552.108. See Gov't Code §§ 552.301(e)(1)(A), .302.

samples of information.³ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address your argument that the Firewall ID, IP addresses, source address port, and the "rule allowing/denying" are the types of information that have no significance other than their use as tools for the maintenance, manipulation, or protection of public property. In Open Records Decision No. 581 (1990), this office determined that certain computer information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information made public under section 552.021 of the Government Code. *See* ORD 581 at 6 (construing predecessor statute). Based on the reasoning in this decision and our review of the information at issue, we determine the Firewall ID, IP addresses, source address port, and the "rule allowing/denying" do not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released.

Next, we address the requestor's contention that the department could have provided more information, but did not and, thus, intentionally concealed information. We note that the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). A governmental body need only 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). We therefore assume the department has made a good faith effort to locate any information that would be responsive to the requestor's inquiries in the present requests.

The requestor also contends the department failed to follow its procedural obligations under section 552.301(b) of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

disclosure under the Act is required to submit to this office within fifteen business days of receiving the request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* 552.301(e). The requests indicate they were received by the department on February 17, 2009 and February 25, 2009, respectively. The department's request for a ruling bears a postmark date of March 3, 2009. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the department complied with the ten-business-day deadline. However, we note the department did not submit the information at issue until April 2, 2009, and thus missed the fifteen-business-day deadline. Therefore, we find the department failed to comply with the procedural requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). In this instance, the department has not raised any exceptions to disclosure for the remaining information. Because you have not raised any exceptions to disclosure for this information, we conclude the department may not withhold the remaining information and must release it to the requestor.

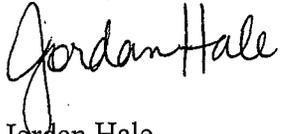
In summary, the Firewall ID, IP addresses, source address port, and the "rule allowing/denying" are not subject to the Act. The remaining information must be released to the requestor.

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

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 cursive script that reads "Jordan Hale". The signature is written in black ink and is positioned above the typed name.

Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 342788

Enc. Submitted documents

cc: Requestor
(w/o enclosures)