



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2009

Mr. Henry W. Prejean
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2009-08372

Dear Mr. Prejean:

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# 346249.

The Brazoria County Information Systems Director (the "county") received a request for all e-mails from a specified judge's office during a specified time frame. You state that you have released some of the requested information. You assert that the submitted information is not subject to the Act. In addition and in the alternative, you claim that portions of the submitted information are exempted from disclosure under sections 552.101, 552.107, 552.117, 552.1175, 552.130, 552.137, and 552.147 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state that some of the information responsive to the request is not subject to the Act because it is no longer in the county's possession. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). You indicate that some of the responsive information has been deleted from the county's computers and is only stored on back-up tapes.

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.

You state that the county no longer maintains some of the requested information because it is not maintained on the hard drive of the computers at issue. We also understand you to claim that to restore the information at issue, the county would be required to load backup tapes and restore the data contained on each tape. Based on your representations, we determine that the locations of the files have been deleted from the FAT system. Accordingly, we find that the deleted information is no longer being "maintained" by the county at the time of the request, and is not public information subject to disclosure under the Act. *Bustamante* 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). Thus, we conclude the Act does not require the county to release the requested e-mails that have not been recovered. However, as you have identified and submitted recovered documents that contain information the requestor seeks, we will address your arguments for this information.

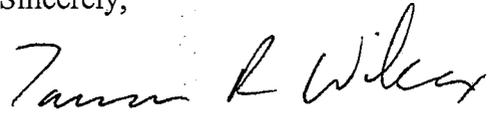
Next, you argue that the submitted information is not subject to the Act because it consists of judicial records of Brazoria County Justices of the Peace that are maintained by the county on behalf of the judiciary. A justice of the peace is a member of the judiciary. The Act does not apply to the judiciary or judicial records. Gov't Code § 552.003(1)(B); *see also* Gov't Code § 552.0035 (stating that access to judicial records is governed by Supreme Court of Texas or other applicable laws or rules). Based on your representations and our review, we find that the information at issue consists of records of the judiciary that are not subject to release under the Act. We therefore conclude you do not need to release the submitted information in response to 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

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, appearing to read "Tamara Wilcox".

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

Ref: ID# 346249

Enc. Submitted documents

c: Requestor
(w/o enclosures)