



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2009

Ms. Christine Badillo
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2009-13943

Dear Ms. Badillo:

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# 357598.

The Leander Independent School District (the "district"), which you represent, received six requests from the same requestor for e-mails, including deleted e-mails, sent or received by five named individuals during specified time periods, and all audio recordings of any interactions between the requestor, the requestor's spouse, and district personnel. You indicate the district will provide some of the requested information to the requestor. You claim, to the extent any information responsive to the request for deleted e-mails exists, it is not subject to the Act. We have considered your arguments.

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). In this instance, you state any e-mails deleted by the named individuals have been deleted from the district's computers and may only be stored as backup data on magnetic 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 the district no longer maintains any information responsive to the request for deleted e-mails, but some may exist as backup data maintained on magnetic tapes. You assert the information is not maintained on the hard drives of the computers at issue. You state to restore the information, the district would be required to load backup tapes and restore the data contained on each tape. Based on your representations, we determine the locations of the files have been deleted from the FAT system. Accordingly, we find the deleted information was no longer being "maintained" by the district at the time of the requests and is not public information subject to disclosure under the Act. *Bustamante* at 266. Thus, we conclude the Act does not require the district to release any information that is stored remotely in this instance.

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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 357598

c: Requestor