



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 16, 2010

Ms. Alicia Richardson
City Secretary
City of Highland Village
1000 Highland Village Road
Highland Village, Texas 75077

OR2010-05475

Dear Ms. Richardson:

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# 376370.

The City of Highland Village (the "city") received a request for three categories of information: 1) leave balances for a named individual during a specified time period; 2) a copy of the log book from the Highland Village Fire Department (the "department") for a specified date; and 3) leave balance information taken from the city's back-up for a specified period. You state that you will provide the requestor with information responsive to Category 1 and that the requestor already has access to the information responsive to Category 2. You argue that the city is not required to provide the information responsive to Category 3 to the requestor pursuant to section 552.228 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note that Category 3 requests information that existed on the city's back-up tape at the time of the request. 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 drive. 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 to restore the information at issue, the city would be required to restore data from the city's back-up tapes onto a separate server. Based on this representation, we find you have demonstrated that the locations of the computer files at issue have been deleted from the FAT system. Therefore, we find that any of the requested information that existed only in back-up tapes at the time of the request was no longer being "maintained" by the city at the time of the request, and is not public information subject to disclosure under the Act. *See Econ. Opportunities Dev. Corp.*, 562 S.W.2d at 266; *see also* Gov't Code §§ 552.002, .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 city to release any responsive information that was stored remotely on the city's back-up tapes on the date of the present request.

Next, we address your assertion that the information responsive to Category 2 is already available to the requestor on a shared computer drive maintained by the department, which is the requestor's employer. We note that section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. Gov't Code § 552.228(a). *Cf.* Open Records Decision No. 682 at 5 (2005) ("A public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body's website for requested public information."). Further, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; *see* Gov't Code § 552.221(b). Therefore, even though you state the information in Category 2 is available to the requestor via the department's shared computer drive, the city still must provide him access to or copies of the information requested in Category 2. However, we note the requestor may agree to accept the information on the department's computer drive in fulfillment of his request for information under the Act. *See* ORD 682 at 5.

In summary, the city need not release any of the requested information that existed on the city's backup tapes at the time of the request. The city must release Category 2 to the requestor unless the requestor agrees to accept the information on the department's shared computer drive in fulfillment of his request under the Act.

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 376370

Enc. Submitted documents

c: Requestor
(w/o enclosures)