



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2012

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

OR2012-00237

Dear Ms. Soldano:

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# 441550.

The Texas Department of Motor Vehicles (the "department") received a request for two years of transaction time stamp data for each department location. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we understand you to assert some responsive information is not maintained by the department. 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 some of the responsive information has been deleted from the department's computers, and you state the information at issue is stored offsite on backup tapes.

¹We 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.

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 department does not maintain some of the requested information because it is stored offsite on backup tapes that are created through Team for Texas (IBM). We understand you to claim the information is not maintained on hard drives of the department’s computers or on the department’s servers. You state the department does not have a way to search the backup tapes electronically for responsive information or to separate out the responsive information. Based on your representations, we determine the locations of the files have been deleted from the FAT system. Accordingly, we find that the deleted information was no longer being “maintained” by the department 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, .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 in this instance, the Act does not require the department to recover and release any information that was stored only remotely on the department’s backup tapes on the date the present request was received. However, we will consider the department’s arguments for the requested information that is not stored on backup tapes.

Next, we address your assertion that the responsive information is not available in the format sought by the requestor, and the request requires the creation of a new document. We note the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2. Additionally, as noted above, the Act does not require a governmental body to release information that did not exist when it received a request. *See Bustamante*, 562 S.W.2d 266; ORDs 605 at 2, 555 at 1, 452 at 3, 362 at 2. In this instance, you state only that the department did not maintain the requested records in the format sought by the requestor, not that the data responsive to the request did not exist on the date of the request. On the contrary, you state that the department is in possession of some of the necessary data.

A request for public information that requires a governmental body to program or manipulate existing data is not considered to be a request for the creation of new information. *See* Gov’t Code § 552.231; *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied) (plaintiffs’ request required manipulation of existing data rather than creation of new information); Open Records Decision No. 661 at 6-7 (1999). Thus, if information that is otherwise available to a governmental body can be programmed

or manipulated for the purpose of responding to a request for information, then the governmental body has access to information responsive to that request. Accordingly, while the department is not required to create a document in response to the request, documents from which the requested information may be derived would be responsive to this request. A governmental body must make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

Section 552.231 prescribes procedures that must be followed if, in responding to a request for information, a governmental body would be required to program or manipulate data. *See* Gov't Code § 552.231(a) (written statement described by section 552.231(b) shall be provided to requestor if governmental body determines (1) responding to request for information will require programming or manipulation of data and (2) compliance with request is not feasible or will result in substantial interference with ongoing operations or that information could be made available in requested form only at costs that cover programming and manipulation). A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation to provide the requested information or to seek a ruling from this office as to whether the information is excepted from disclosure. *See Fish*, 31 S.W.3d at 682. Thus, the department's officer for public information carries the duty of promptly producing such public information when it is requested, unless the department wishes to withhold the information. Gov't Code §§ 552.203, .221. Further, a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Id.*; Open Records Decision No. 497 (1988). In this instance, the department has submitted information that it has deemed to be responsive to the request. Accordingly, we will consider the department's arguments against disclosure.

Next, you indicate some of the submitted information is not responsive to the instant request because it does not consist of the requested data. Further, we note the requestor is only seeking the times of the transactions. Accordingly, we find the submitted information, aside from the requested times of the transactions, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and the department need not release non-responsive information in response to the request.² As you raise no exceptions to disclosure of the responsive requested times of the transactions, the department must release this information.

Finally, the department indicates the requestor prefers to receive copies of the requested information in electronic format. Section 552.228 of the Government Code requires a governmental body to provide a copy of the public information in the requested medium if

²As our determination is dispositive for the non-responsive information, we need not address your arguments against its disclosure.

it has the technological ability to do so without the purchase of software or hardware. *See* Gov't Code § 552.228(b)(1), (2). Accordingly, if the department has the technological capability to provide the remaining information to the requestor in the requested format, it must do so; however, if the department does not have the technological capability, it must provide the information at issue in another medium acceptable to the requestor. *See id.* § 552.228(c).

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 441550

Enc. Submitted documents

c: Requestor
(w/o enclosures)