



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2014

Mr. Mark LaForge
Assistant District Attorney
Fort Bend County District Attorney's Office
301 Jackson Street, Room 101
Richmond, Texas 77469

OR2014-05387

Dear Mr. LaForge:

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# 518228.

The Fort Bend County District Attorney's Office (the "district attorney's office") received a request for documents detailing the names, dates of birth, and charges filed against any Fort Bend County (the "county") employee during a specified time period. You contend the district attorney's office does not have information responsive to the request for information. Additionally, you claim the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the submitted arguments.

Initially, you state the district attorney's office "does not maintain any special computer databases, lists, compilations, notations or file rooms for cases involving [d]efendants who are current or former employees of [the county] at the time they are charged with a crime or prosecuted." The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990)*. Furthermore, the Act does not require a governmental body to make available information that did not exist when the request was received, nor does it require a governmental body to compile information or prepare new information. *See Economic 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).

However, you further state “[t]o the extent that some persons in the [district attorney’s office] might have personal knowledge that a case they previously viewed, worked on, or had incidental knowledge of involved a charged [d]efendant who was then a current or former [county] employee,” retrieving any such information would require the district attorney’s office to communicate with each of the employees in the district attorney’s office “about the thousands of cases collectively prosecuted” by the district attorney’s office during the specified time period. Thus, we understand some responsive records may exist within the district attorney’s office’s possession. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information that the governmental body holds. See Open Records Decision No. 561 at 8-9 (1990). Additionally, a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976).

Further, you contend that any response “generated from [the recollections of employees of the district attorney’s office] would constitute information created by the [district attorney’s office].” While the district attorney’s office is not required to create documents that did not exist at the time of the request, documents from which the requested information may be derived are responsive to this request. Therefore, to the extent the district attorney’s office maintained any information detailing the name and date of birth of, and charges filed against, any county employee during the specified time period when it received the present request for information, any such documents are responsive to the request and may be withheld only if an exception to disclosure is applicable. Accordingly, we will consider your arguments against disclosure of the requested information.

To the extent the district attorney’s office maintains information responsive to the request, we must address the district attorney’s office’s obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body 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. See Gov’t Code § 552.301(e). You state you received the request for information on January 9, 2014. However, as of the date of this letter, you have not submitted to this office a copy of the specific information requested or a representative sample of such information.

Consequently, we find the district attorney's office failed to comply with the requirements of section 552.301.

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 requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Although the district attorney's office raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not be lawfully released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

Ref: ID# 518228

c: Requestor