



February 8, 2000

Open Records Decision No. 664

Re: Does the requirement imposed by section 552.221(a) of the Government Code, that the governmental body “promptly” release information deemed to be public, mean that the body must release the information as close to immediately as possible under the circumstances, or does “promptly” mean simply no later than ten business days after the receipt of the request for that information?
(ORQ-45)

Dear Ladies and Gentlemen:

Section 552.011 of the Government Code grants the Attorney General the authority to issue opinions for the purpose of maintaining uniformity in the application, operation, and interpretation of the Public Information Act. Under that authority, we consider whether the requirement under section 552.221(a) of the Government Code that a governmental body “promptly” produce information required to be released means that the governmental body must release the information as soon as possible, or whether “promptly” simply means that a governmental body must release requested information within ten business days of the request. This decision is limited to a discussion of the proper timing of the release of information that is determined to be public information not subject to an exception to required public disclosure. We conclude that section 552.221(a) requires the release of information not excepted from required disclosure as soon as possible under the circumstances, that is, within a reasonable time, without delay.

Section 552.221 of the Government Code describes the mechanism for compliance with a request for public information. The provision, which requires prompt production of public information and provides for two situations in which a governmental body must communicate with the requestor about a need to schedule inspection or duplication of requested information, reads as follows:

Sec. 552.221. Application for Public Information; Production of Public Information. (a) An officer for public information of a governmental body *shall promptly produce* public information for inspection, duplication, or both on application by any person to the officer.

(b) An officer for public information complies with Subsection (a) by:

(1) providing the public information for inspection or duplication in the offices of the governmental body; or

(2) sending copies of the public information by first class United States mail if the person requesting the information requests that copies be provided and pays the postage and any other applicable charges that the requestor has accrued under Subchapter F.

(c) If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

(d) If an officer for public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested under Subsection (a), the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication. [Emphasis added.]

The statute requires a governmental body to produce requested public information “promptly.” Although the Public Information Act does not define “promptly,” other provisions in the Act give us guidance in interpreting the term as used in section 552.221(a). Among the relevant provisions are section 552.228 and section 552.230. “It shall be a policy of a governmental body to provide a suitable copy of public information within a reasonable time after the date on which the copy is requested.” Gov’t Code § 552.228(a). “A governmental body may promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and *without delay*.” Gov’t Code § 552.230(a) (emphasis added). In construing “promptly” and “without delay” in the predecessor provisions, Open Records Decision No. 467 (1987) held that the Act:

prohibits unreasonable delays in providing public information while recognizing that the functions of the governmental body must be allowed to continue. The interests of one person requesting information under the Open Records Act [now Public Information Act] must be balanced with the

interests of all the members of the public who rely on the functions of the governmental body in question.

Open Records Decision No. 467 at 6 (1987). Thus, when we read these provisions together with the mandate of section 552.221(a) to produce public information promptly, we believe that the Act requires a governmental body, in the usual case, to produce requested public information as soon as reasonably possible and without delay.¹ What constitutes a reasonable period of time depends on the facts in each case. The volume of information requested is “highly relevant to what constitutes a reasonable period of time.” Open Records Decision No. 467 at 6 (1987); *see also Taft v. Wolma*, 541 S.W.2d 673 (Tex. Civ. App.—San Antonio 1976, no writ) (“promptly” within rules requiring appellant to promptly request transcript means reasonable time considering all attendant facts and circumstances surrounding act to be performed). A reasonable period of time may be less than or greater than ten business days, depending on the circumstances. For example, a governmental body should be able to comply immediately with a request for one specified document that the governmental body has previously released to the public or that the Attorney General has previously determined to be public information, absent unusual circumstances.

On the other hand, a request for a voluminous amount of information which requires an extensive search for responsive information might require more than ten business days for production of the information. *See* Gov’t Code § 552.221(d); *but see* Gov’t Code § 552.301.²

¹While we reaffirm the reasoning of Open Records Decision No. 467 (1987) with this decision, we note that the time limitations provided by the Act have been amended over the years. In 1987 a governmental body was required to request a decision from the Attorney General “within a reasonable time, no later than ten days” after receiving the request for the information. That statute was amended in 1989 to require the governmental body’s request “within a reasonable time, no later than ten *calendar* days” after receiving the request. Act of May 29, 1989, 71st Leg., R.S., ch. 1248, § 14, 1989 Tex. Gen. Laws 4996, 5027 (emphasis added). In 1997 it was amended again by changing “calendar” days to “business” days. Act of June 1, 1997, 75th Leg., R.S., ch. 1231, § 5, 1997 Tex. Gen. Laws 4697, 4701.

²The Act requires a governmental body to seek an attorney general decision regarding release of the requested information not later than the tenth business day after receiving the request. Gov’t Code § 552.301(b). This requirement presupposes that the governmental body has identified the responsive information and determined whether to withhold or to release the information within that time. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 476 (Tex. App.—Dallas 1999, no pet.). In evaluating whether an exception to disclosure may apply, a governmental body may use only as much time as is reasonably necessary, up to the statutory maximum of ten business days from the date of receiving the request. Gov’t Code § 552.301(b). A reasonable period of time includes the time necessary to identify and collect the responsive records as well as the time to evaluate whether an exception may apply to the records. Once the evaluation has occurred, if the governmental body concludes that no exceptions apply, the governmental body must release the records as soon as possible under the circumstances. Ten business days is the limit on the time allowed to make the evaluation; it is a deadline for requesting an attorney general decision, not a grace period. The Act also requires a governmental body that seeks an open records ruling to submit copies of the requested information or representative samples of voluminous information within 15 business days of receiving the request. Gov’t Code § 552.301(e)(1).

The Act recognizes in its requestor notification provisions two situations in which public information may not be available for inspection or duplication at the time of the request: the requested information is in “active use or in storage” or the public information officer is otherwise unable to produce the requested information. Gov’t Code § 552.221(c), (d). If a governmental body cannot produce public information within ten business days, because, for example, the information is voluminous or widely distributed throughout the agency, the procedural mechanism of section 552.221(d) for notifying a requestor of a date and hour within a reasonable time when the information will be available is triggered. The ten-day deadline in subsection (d) mandates communication to the requestor of a *reasonable* time for the requestor to expect the information to be available. That procedural deadline does not define “promptly” for purposes of subsection (a), but rather activates the notification requirement. The notification requirement of subsection (d) does not entitle a governmental body which can produce public information not subject to an exception within ten business days to withhold such information for ten business days.

Like subsection (d), section 552.221(c) permits a governmental body to schedule the production of public information within a reasonable time. The scheduling is permitted under subsection (c) if, at the time of the request, the information is unavailable because it is in “immediate active use” or storage. *See* Open Records Decision No. 121 at 3 (1976). In interpreting the predecessor provision, this office has found that the language of section 552.221(c) allows:

an agency to avoid unreasonable disruption of its immediate business, by scheduling a more convenient, but reasonable, time at which the requestor must be given the information sought.

Open Records Decision No. 121 at 3 (1976)(emphasis in original). *See also* Open Records Decision No. 148 at 1 (1976) (“active use” does not include entire time employee’s promotion is under consideration). Information which is actually in current active use or storage at the time of the request is considered “unavailable,” so that its inspection or duplication may be scheduled for some *reasonable* time in the future under section 552.221(c).³ The portions of the requested information which are not in current active use “should be separated, if possible, and produced immediately.” Open Records Decision No. 121 at 3 (1976). Therefore, whether information is available at the time of the request or unavailable under subsection (c) because it is in active use or storage or under subsection (d) because the officer for public information cannot produce the information, the information still must be produced within a reasonable time. All requested public

³In interpreting “active use,” this office has held that, for example, if an employee is in the process of typing notes of a meeting, that information would be in immediate active use, and a specific time when the material may be inspected should be scheduled. Open Records Decision No. 225 at 3 (1979). However, the fact that a district attorney is reviewing information in a file pending criminal prosecution does not establish that the entire file is in immediate active use. Open Records Decision No. 121 (1976).

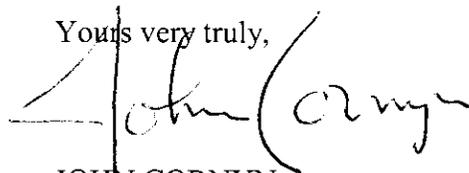
information not subject to an exception must be produced promptly. "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay. Thus, if it reasonably possible to do so, a governmental body must release the requested information prior to the expiration of ten business days.

S U M M A R Y

A governmental body must release public information not excepted from required disclosure under the Public Information Act promptly. The prompt release of information requires release as soon as possible under the circumstances, that is, within a reasonable time, without delay. Section 552.221(d) does not entitle a governmental body automatically to withhold for ten business days public information not excepted from disclosure.

When a governmental body cannot produce requested information within ten business days of receipt of the request for the information, the public information officer must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available. If public information is not available because it is in immediate active use or storage, the public information officer must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be made available.

Yours very truly,

A handwritten signature in black ink that reads "John Cornyn". The signature is written in a cursive style with a vertical line through the middle of the name.

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

REBECCA L. PAYNE
Chief, Open Records Division

Patricia Michels Anderson
Assistant Attorney General - Open Records Division