



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2005

Ms. Sylvia F. Hardman
General Counsel
Texas Department of Assistive and Rehabilitative Services
4800 North Lamar Boulevard Suite 300
Austin, Texas 78756

OR2005-03491

Dear Ms. Hardman:

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# 222612.

The Texas Department of Assistive and Rehabilitative Services (the "department") received a request for "a copy of [a] Legislative Grant of Immunity[.]" You inform us that the department has no information that is responsive to this request. We have considered your arguments and have reviewed the documents you submitted.

You inform us that this request for information relates to a lawsuit brought by the requestor against employees of the department. You also explain, and have submitted documentation reflecting, that sovereign and official immunity were asserted as defenses to the requestor's claims. You inform us, however, that the department has no information that is responsive to this request for "a copy of this Legislative Grant of Immunity[.]" You state that the department would be required to conduct legal research in order to respond to this request. The Act does not require a governmental body that receives a request for information to answer factual questions, conduct legal research, or create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that received the request. *See Gov't Code* § 552.002(a); Open Records

Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). A governmental body need only make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Therefore, based on your representations, we conclude that the department has no further obligation to respond to this request for information.¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

¹As we are able to make this determination, we do not address your claim under section 552.103 of the Government Code.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 222612

c: Ms. Doris Carlisle
9170 Forest Lane #214D
Dallas, Texas 75243