



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2009

Ms. Sarah W. Langlois
McGinnis, Lochridge & Kilgore, L.L.P.
Attorney for Spring Branch Independent School District
3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010

OR2009-07344

Dear Ms. Langlois:

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# 345114.

The Spring Branch Independent School District (the "district"), which you represent, received a request for correspondence sent to or from specified individuals during specific time periods that pertains to bonds, funding, or federal action.¹ You claim that, to the extent any responsive information exists, it is not subject to the Act. We have considered your arguments.

You state that the district searched its physical files and hard drives, but did not locate any information responsive to the request. 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 state that any responsive information has been deleted from the district's computers and may only be stored as backup data on magnetic tapes.

¹We note the district sought and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

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 that the district no longer maintains any responsive information, but some may exist as backup data maintained on magnetic tapes. You assert that the information is not maintained on the hard drive of the computers at issue. You state that to restore the information, the district would be required to load backup tapes and restore the data contained on each tape. Based on your representations, we determine that 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 district 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, to the extent any responsive information exists, we conclude the Act does not require the district to release any information that is stored remotely in this instance.

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 at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 345114

Enc. Submitted documents

cc: Requestor
(w/o enclosures)