



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2009

Mr. Robert L. Dillard, III
Attorney for City of University Park
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-09214

Dear Mr. Dillard:

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# 348013.

The University Park Police Department (the "department"), which you represent, received a request for all e-mails during a specified time period sent between a named officer's work e-mail address and seven specified e-mail addresses. You claim, to the extent any responsive information exists, it is not subject to the Act. We have considered your arguments.

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 dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). In this instance, you state the department searched the named officer's work e-mail account, but did not locate any information responsive to the request. You also state any responsive information has been deleted from the department's computers and may only be stored as backup data on magnetic tapes.

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

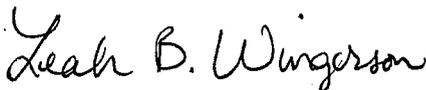
from the FAT. Some software programs immediately delete the location information from the FAT when a file is deleted. Once the location reference is deleted from the FAT, the data may be overwritten and permanently removed.

You state the department no longer maintains any responsive information, but some may exist as backup data maintained on magnetic tapes. You assert the information is not maintained on the hard drive of the computer at issue. You state to restore the information, the department would be required to load backup tapes and restore the data contained on each tape. Based on your representations, we determine the locations of the files have been deleted from the FAT system. Accordingly, we find 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. Thus, we conclude the Act does not require the department 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 348013

Enc. Submitted documents

c: Requestor
(w/o enclosures)