



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 9, 2015

Ms. Patricia Fleming
Assistant General Counsel
Office of General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2015-04528

Dear Ms. Fleming:

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# 555804.

The Texas Department of Criminal Justice (the "department") received two requests from two different requestors for the name, sex, ethnicity, title, and dates of employment of each department employee at the Estelle Unit on two specified dates. The department claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.¹

Initially, we note the first requestor seeks information created through the date of the request, as well as certain information created after the date of the request. It is implicit in several provisions of the Act that the Act applies only to information already in existence.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. See Attorney General Opinion JM-48 at 2 (1983); see also Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of information the department maintained or had a right of access to as of the date it received the request.

Next, we note the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). The responsive information consists of the name, sex, ethnicity, salary, title, and dates of employment of employees of the department that are subject to section 552.022(a)(2). The department must release this information pursuant to section 552.022(a), unless it is made confidential under the Act or other law. See *id.* Although the department raises section 552.103 of the Government Code for the responsive information, this exception is discretionary in nature and does not make information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the department may not withhold the responsive information under section 552.103 of the Government Code. As the department raises no further exceptions to disclosure, the department must release the responsive information.

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,

A handwritten signature in black ink, appearing to read "D. Wheelus", with a long horizontal flourish extending to the right.

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 555804

Enc. Submitted documents

c: Requestors
(w/o enclosures)