



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 24, 1997

Mr. Michael R. Little  
District Attorney  
Liberty County  
P.O. Box 4008  
Liberty, Texas 77575

OR97-2142

Dear Mr. Little:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108840.

The Liberty County District Attorney's office (the "office") received a request for the probable cause affidavit filed in connection with the arrest of Robert Brice Morrow. However, the office is withholding the probable cause affidavit based on sections 552.101, 552.107, and 552.108 of the Government Code. You enclose a copy of the document you seek to withhold.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by judicial decision..

You claim that the "material which has been requested by the requester has been ordered sealed by the Honorable W.G. Woods, Jr., District Judge, of the 253<sup>rd</sup> Judicial Court of Liberty County, Texas as the named judge presiding over the criminal case styled *State of Texas vs. Robert Brice Morrow*, Cause No. 960807. However, we note that in *Houston Chronicle Publishing Company v. The Honorable W.G. Woods, Jr.* 949 S.W. 2d 492 (Tex. App.--Beaumont 1997, orig. proceeding) the court conditionally granted a writ of mandamus involving the records at issue.

We further note that article 18.01(b) of the Code of Criminal Procedure provides:

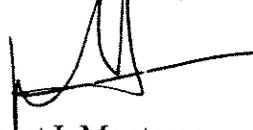
No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit

setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed.* [Emphasis added.]

Information specifically made public by law outside the Open Records Act may not be withheld pursuant to any of the act's exceptions to required public disclosure. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, we conclude that your office must release the probable cause affidavit filed in the matter of *State of Texas vs. Robert Brice Morrow*, Cause No. 960807.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/glg

Ref.: ID# 108840

Enclosures: Submitted documents

cc: Mr. Phil Archer  
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P.O. Box 2222  
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(w/o enclosures)