



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 5, 1997

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

OR97-2647

Dear Mr. Little:

You ask this office to reconsider our ruling in Open Records Letter No. 97-2142 (1997). Your request for reconsideration was assigned ID# 111067.

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. In Open Records Letter No. 97-2142 (1997), this office concluded that your office must release the probable cause affidavit filed in the matter of *State of Texas vs. Robert Brice Morrow*, Cause No. 960807, based on the court of appeals decision in *Houston Chronicle Publishing Company v. The Honorable W.G. Woods, Jr.* 949 S.W. 2d 492 (Tex. App.--Beaumont 1997, orig. proceeding).

In your request for reconsideration, you explain that there may have been some miscommunication regarding the original request. You state that it appears to you that the requestor seeks the probable cause affidavit which supported the arrest warrant of Robert Brice Morrow. In our ruling, we assumed that the requestor seeks the probable cause affidavit which provided the basis for a search warrant. You state that you have provided the requestor with copies of two search warrant affidavits. You contend, however, that if the requestor in fact seeks the arrest warrant affidavit, that document is sealed pursuant to the court order, and therefore, may be withheld under section 552.107(2) of the Government Code.

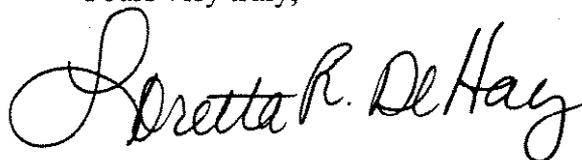
You contend that the arrest warrant affidavit has been ordered sealed by the Honorable W.G. Woods, Jr., District Judge, of the 253<sup>rd</sup> Judicial Court of Liberty County, Texas as the named judge presiding over the criminal case styled *State of Texas vs. Robert Brice Morrow*, Cause No. 960807. You further contend that the court of appeals decision in *Houston Chronicle Publishing Company v. The Honorable W.G. Woods, Jr.* 949 S.W. 2d

492 (Tex. App.--Beaumont 1997, orig. proceeding) conditionally granted a writ of mandamus involving the search warrant affidavits and not the arrest warrant affidavit. We have reviewed the decision in that case and agree that the appellate court in that decision does not deal with the sealing of the arrest warrant affidavit. Therefore, we now address your arguments that you must withhold the arrest warrant affidavit under section 552.107(2) of the Government Code because of the court order sealing the document.

Section 552.107(2) of the Government Code provides that information is excepted from required disclosure if "a court by order has prohibited disclosure of the information." You have provided to this office the court order, dated April 28, 1997, that seals the arrest warrant affidavit. Because we agree that the part of the order sealing the arrest warrant affidavit was not addressed in the abovementioned writ of mandamus proceeding, you may withhold the arrest warrant affidavit under section 552.107(2) of the Government Code.

Open Records Letter No. 97-2142 (1997) is overruled to the extent it conflicts with this conclusion. 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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref: ID# 111067

cc: Mr. Phil Archer  
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