



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 9, 1998

Mr. Randall B. Strong  
Attorney at Law  
503 Ward  
Baytown, Texas 77520

OR98-0094

Dear Mr. Strong:

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# 112248.

The Webster Police Department (the "department") received an open records request for "all affidavits for search warrants that have been issued relating to the aggravated kidnaping [sic] of Sandra Sapaugh as well as copies of all return and inventory lists related to such search warrants." You seek to withhold the requested records pursuant to section 552.108 of the Government Code.<sup>1</sup>

We note at the outset that it is well established that 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). 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.]

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<sup>1</sup>Although you state that the city is not the "custodian" of the requested records, your statement is belied by the fact that you have provided copies of the records at issue to this office in compliance with section 552.301 of the Government Code. *See* Attorney General Opinion JM-266 (1984) (fact that request for public record might be more appropriately directed to different governmental body does not mean that it can be dismissed by governmental body that actually possesses requested information).

*See also Houston Chronicle Publishing Co. v. Woods*, 949 S.W.2d 492 (Tex. App.--Beaumont 1997, orig. proceeding). Accordingly, we conclude that the department must release the search warrant affidavits submitted to this office in their entirety.

You also seek to withhold pursuant to section 552.108 the return and inventory list for one of the requested search warrants.<sup>2</sup> You inform us, however, that the return has been filed with the Harris County District Clerk's Office. Information contained in public court records may not be withheld from the public pursuant to any of the Open Records Act's exceptions. *Cf. Star Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected by common-law privacy). Because the search warrant return and inventory list held by the department has been filed with the court, the department may not withhold this record pursuant to section 552.108. *See also* Open Records Decision No. 287 (1981) at 2 ("law enforcement" exception not intended by legislature to shield from public view information that would ordinarily be available to public if possessed by different governmental unit).

We are resolving this matter with an 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 should 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/RWP/rho

Ref.: ID# 112248

Enclosures: Submitted documents

cc: Ms. Sally Mann Romano  
Ogden, Gibson, White & Broocks, L.L.P.  
2100 Pennzoil South Tower  
711 Louisiana  
Houston, Texas 77002  
(w/o enclosures)

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<sup>2</sup>You inform us that the department does not possess one of the requested returns. *See* Open Records Decision No. 445 (1986) (Open Records Act does not require governmental body to obtain information not in its possession).