



December 20, 1999

Sheriff Walt Yerger
Parmer County Sheriff's Office
Post Office Box 860
Farwell, Texas 79325

OR99-3701

Dear Sheriff Yerger:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 130435.

The Parmer County Sheriff's Office received a request for records concerning its search of a particular truck. You have submitted copies of responsive records with highlights of the information you seek to withhold from disclosure. You state that the information concerns an open investigation.

The information includes a sworn affidavit supporting a search warrant that was executed. A sworn affidavit supporting an executed search warrant is made public by article 18.01(b) of the Code of Criminal Procedure. A governmental body may not use one of the exceptions in the Act to withhold information that a statute other than the Act expressly makes public. Open Records Decision No. 623 (1994). Thus, the Sheriff's Office must release the affidavit to the requestor.

You do not expressly raise any exception to required public disclosure of the information. The exception in the Act that protects law enforcement interests, section 552.108, is waived if not timely raised. See Open Records Decision No. 586 (1990). You indicate that the investigation is ongoing. The Parmer County Attorney states that "[a]n exception . . . exists for ongoing police investigations including information regarding informants." Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). This office has interpreted "basic information" to mean information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Even if we were to find that the Sheriff's Office properly raised section 552.108, we believe that, for the most part, the information is basic information to which section 552.108 is inapplicable. Gov't Code § 552.108(c). As for the information that is not considered to be basic information, we do not believe the Sheriff's Office has established that the release of the information would interfere with the detection, investigation, or prosecution of crime. Accordingly, we conclude that, in this instance, the Sheriff's Office has not established that the information is excepted from public disclosure under section 552.108.

The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. Open Records Decision Nos. 515 at 3 (1988). The privilege does not apply if the subject of the information knows the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). In this case, the information you highlighted as protected from disclosure appears in the affidavit, which is made public by statute. We therefore find that the informer's privilege is inapplicable in this instance.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/jc

Ref.: ID# 130435

encl. Submitted documents

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(w/o enclosures)