Office of the Attorney General · State of Texas
JOHN CORNYN

September 25, 2000

Lieutenant Arturo Valdez
Central Record Division
McAllen Police Department
1501 Pecan Boulevard
McAllen, Texas 78501

OR2000-3691

Dear Lieutenant Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140844.

The City of McAllen Police Department (the "department") received a request for a copy of a complete case file. You claim that the requested information is excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that the requested file contains five arrest warrants and their supporting affidavits, each of which appears to have been filed with a court. To the extent the warrants and affidavits have been filed with a court, they are considered public, are not subject to the section 552.108(a)(2) exception to disclosure, and must be released to the requestor. *See* Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992).

The remainder of the information, with the exception of basic information, may be withheld under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" if it "deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Gov't Code § 552.108(a)(2). Here, you state that the case was "no billed" by the grand jury. Therefore, we find the case file pertains to an investigation that did not result in a conviction or deferred adjudication, and, under section 552.108(a)(2), you need not disclose the requested information.

However, section 552.108(a)(2) is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c); *see 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). Consequently, you must release basic information contained in the case file in addition to the arrest warrants and affidavits, to the extent they were filed with a court. Moreover, while section 552.108(a)(2) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

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).

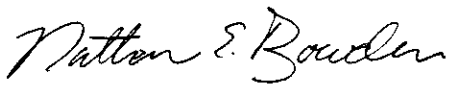
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/cwt

Ref: ID# 140844

Encl. Submitted documents

cc: Mr. Felipe A. Saenz
55 Cove Circle
Brownsville, Texas 78523
(w/o enclosures)