



February 12, 2001

Mr. J. Robert Giddings
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR2001-0524

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144131.

The University of Texas System (the "system") has requested a decision on behalf of the University of Texas at Arlington ("UTA") concerning a request for the records of the UTA police department that relate to incident No. 99-10131, a sexual assault investigation. You indicate that the requestor, an attorney representing the purported victim of the assault, has been provided with responsive "front page" offense report information. You claim that the remaining responsive information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. You have provided a sample of the information that you wish to withhold.¹ We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information includes an executed search warrant and the probable cause affidavit for that warrant. The affidavit is made public by law outside the Public Information Act. Information specifically made public by law outside the 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). Amended 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

in every instance in which a search warrant is requested. *The affidavit is public information if executed*, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code 18.01(b))(emphasis added). Once executed, a search warrant affidavit may not be withheld from public disclosure. *Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492, 498-9 (Tex. App.-- Beaumont 1997, orig. proceeding); *Houston Chronicle Publ'g Co. v. Edwards*, 956 S.W.2d 813 (Tex. App.--Beaumont 1997, orig. proceeding). Therefore the submitted affidavit must be released. You must also release the search warrant as it appears to have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

We now turn to your argument raised under section 552.108 of the Government Code. This section provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. *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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). You relate that the investigation in this case is ongoing. You have also provided a letter from James D. Ferguson, Interim Chief of the UTA police department, stating that this matter is currently under investigation. Therefore, you have demonstrated that responsive information is excepted by section 552.108(a)(1). Note, however, that "basic information" is not excepted from disclosure by section 552.108. Gov't Code 552.108(c). We believe such basic information refers to the "front page" information held to be public in *Houston Chronicle*. Open Records Decision No. 216 (1978).

Because the identity of a purported victim of sexual assault is protected by the common law right of privacy, as is other information which might furnish a basis for identifying such a victim, such as the location of the crime, this information is not subject to public disclosure.

See Open Records Decision No. 339 (1982). This type of identifying information must be redacted from the “front page” information generally made public by *Houston Chronicle*.

You indicate that you have released “basic information” to the requestor. In this case, the requestor is an attorney who represents the purported victim. As such, he has a special right of access to information which must be withheld from the public on the grounds that release of the information implicates the privacy rights of the purported victim. See Gov’t Code § 552.023. Therefore, you may release this information to the requestor, but you may not release this information in response to a request made by an individual who does not have a special right of access to this identifying information.

As the above discussion resolves this request we do not address the exceptions raised under other sections of the Government Code. 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).

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 Hadassah Schloss at 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,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 144131

Encl: Submitted documents