OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 4, 2001

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053

OR2001-4463

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152803.

The City of Grand Prairie (the "city") received a request for "the arrest warrant and/or probable cause affidavit" in reference to a named individual. You indicate that some of the information responsive to the request has been released to the requestor. You claim that the submitted probable cause affidavit is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.[1]

We note at the outset that information that is also contained in a public court record is subject to required disclosure and must be released unless expressly confidential under other law. *See* Gov't Code § 552.022(a)(17); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). The submitted probable cause affidavit, signed by a magistrate, evidently is also contained in a public court record. Section 552.108 of the Government Code, asserted by the city on its own behalf, is a discretionary exception under the Public Information Act

[1]You do not state when the city received the request. *See* Gov't Code § 552.301(e)(1)(C). However, the request is dated and stamped as received on July 24, 2001. We thus consider this evidence sufficient to establish that the city received the request on that date.

and not "other law" that makes information expressly confidential.[2] You do not assert any other law that makes the information expressly confidential, nor are we aware of any. We therefore conclude that the submitted information must be released pursuant to section 552.022(a)(17) 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).

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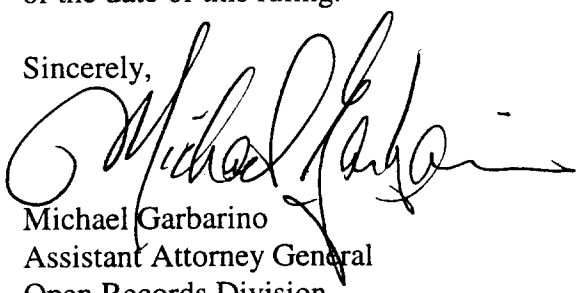
[2]Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 152803

Enc. Submitted documents

c: Mr. Jason Trahan
The Arlington Morning News
1112 Copeland Road, Suite 400
Arlington, Texas 76011
(w/o enclosures)