



June 10, 2002

Ms. Mary J. Kayser
City Secretary
City of Burleson
141 West Renfro
Burleson, Texas 76028-4261

OR2002-3116

Dear Ms. Kayser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164079.

The City of Burleson (the "city") received a request for information on the warrants, arrest record, and legal information pertaining to the requestor. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that the only information you have submitted for our review consists of an arrest warrant and the supporting affidavit. You have not submitted any other arrest record information or legal information pertaining to the requestor. To the extent the city maintains other responsive information, it was required to submit that information, or a representative sample thereof, to this office within fifteen business days of the date it received the request for information. *See* Gov't Code § 552.301(e). Because you did not submit any other responsive information, you have waived your section 552.108 argument with respect to that information, and you must release it to the extent it exists. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived).

With respect to the arrest warrant information you have submitted, we note that the information appears to have been obtained from the files of a municipal court. The Public Information Act (the "Act") applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." Gov't Code § 552.003(1)(B). Information

that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act but is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." Gov't Code § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. If the submitted information is maintained solely by the municipal court, then the information is not subject to the Act. Attorney General Opinion DM-166 (1992). If, on the other hand, the submitted information is also maintained by a governmental body, such as another city department or law enforcement agency, then the information is subject to the Act. *See* Open Records Decision No. 317 (1982) (fact that information originally generated by another entity not relevant to determination of whether it is covered by Public Information Act while possessed by governmental body).

To the extent the submitted information is maintained by the city outside of the municipal court records, we find that the information is subject to section 552.022(a)(17). Section 552.022(a)(17) provides:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(17) information that is also contained in a public court record

....

Gov't Code § 552.022(a)(17). Therefore, the submitted information must be released unless it is confidential under other law. Section 552.108 of the Government Code is not "other law" for the purpose of section 552.022(a). Therefore, the city must release the submitted information to the extent the information is maintained by the city outside of the municipal court records.

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); *Tex. 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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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/sdk

Ref: ID# 164079

Enc: Submitted documents

c: Mr. Paul Chenault
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(w/o enclosures)