OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

November 6, 2002

Mr. Ronald D. Stutes
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-6322

Dear Mr. Stutes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171874.

The City of Flower Mound Municipal Court (the "municipal court"), which you represent, received a request for a particular arrest warrant and probable cause affidavit issued regarding a named individual. You assert that the requested information constitutes records of the judiciary that are not subject to the Public Information Act. In the alternative, you assert that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

The Public Information Act (the "Act") generally requires the disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.021. While the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See* Gov't Code § 552.003(1) (A), (B). In this instance, the request was submitted to the municipal court. You state that the requested information is "contained in the files of the magistrate that issued the warrant." Therefore, based on the nature of the request, your representations, and our review of the submitted records, we agree that this request seeks judicial records, which are not subject to the Public Information Act. *See* Gov't Code § 552.0035 (access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules). As records of the judiciary, however, the information may be public pursuant to other sources of law. *See* Attorney General Opinions DM 166 at 2-3 (1992) (public has general

right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); *see also Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with a court generally considered public and must be released). In addition, the records may be subject to disclosure under statutory law governing municipal courts. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order). As our ruling on this issue is dispositive, we need not address the exceptions you claim under the Act.

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 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,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 171874

Enc: Submitted documents

c: Mr. H. F. Rick Hagen
Jackson & Hagen
100 West Oak, Suite 302
Denton, Texas 76201
(w/o enclosures)