



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 22, 2003

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith
500 North Akard, Suite 1800
Dallas, Texas 75201

OR2003-3470

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180747.

The DeSoto Police Department (the "department") received a written request for all records pertaining to the arrest, investigation, and trial of a named criminal defendant. You contend that the requested information, a representative sample of which you submitted to this office, is excepted from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code.¹

We first note that the submitted information contains documents that are expressly made public by a statute found outside the Public Information Act (the "Act"). Included among the documents you seek to withhold are executed affidavits supporting search warrants, which are specifically made public by statute. *See* Code Crim. Proc art. 18.01(b). The department therefore must release the search warrant affidavits in the submitted information. *See* Open Records Decision No. 525 (1989) (Act's exceptions to required public disclosure not applicable to information expressly made public by other statutes).

¹In reaching our conclusion here, we 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 No. 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.

We also note that contained in the submitted documents is a press release. Assuming this information has previously been released to the public, the press release must now be provided to the requestor. *See* Gov't Code § 552.007(b) (prohibiting selective disclosure of information).

We further note that the submitted information is from a completed criminal investigation. Section 552.022(a)(1) of the Government Code provides that such information is not excepted from required disclosure under the Act, except as provided by section 552.108, or unless the information is expressly confidential under other law. As noted above, you contend that the submitted information is excepted from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code. Section 552.103 is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022.² However, because information subject to section 552.022(a)(1) may be withheld as provided by section 552.108, we will address your section 552.108 claim regarding the remaining submitted information.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or *prosecution* of crime." (Emphasis added.) The Dallas County District Attorney's Office has informed this office that the records at issue pertain to a pending habeas corpus action filed by the criminal defendant. We believe that where the state is seeking to defend a direct challenge of a verdict or a sentence passed down by a trial court, such actions constitute the "prosecution" of a criminal matter for purposes of section 552.108(a)(1). We conclude, therefore, that the release of the remaining submitted information would interfere with the prosecution of crime. Consequently, the department may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). In Open Records Decision No. 127 (1976), this office summarized the types of information made public pursuant to *Houston Chronicle*. *See* Open Records Decision No. 127 at 4 (1976). The department must

²Discretionary 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. 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); 473 (1987) (governmental body may waive section 552.111).

release this information to the requestor, regardless of whether the information is found on the front page of an offense report.

To summarize, executed search warrant affidavits are made public by statutes outside the Act and must be released to the requestor. The department must also provide the requestor with the press release if the release was previously provided to the public. The remaining submitted information may be withheld under section 552.108, with the exception of basic information.

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 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/seg

Ref: ID# 180747

Enc: Submitted documents

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