



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

October 9, 2003

Ms. Angela K. Washington
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2003-7179

Dear Ms. Washington:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189130.

The Addison Police Department (the "department"), which you represent, received a request for information relating to a specified incident, including (1) all incomplete and complete police reports; (2) all logs, citations, tickets, reports, or other documents regarding charges filed against a named individual; (3) all witness statements; (4) all photographs, diagrams, or visual representations of the vehicles involved or of the incident scene; and (5) all alcohol/drug analyses or results of testing performed on the named individual. You inform us that the department has released an accident report and the first page of an arrest report. You claim that the rest of the requested information is excepted from disclosure under sections 552.103, 552.108, 552.119, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We initially note that the submitted information includes an arrest warrant and an affidavit for the arrest warrant. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk *shall make a copy of the warrant and the affidavit available for public inspection* in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, Tex. Sess. Laws Serv. 1631 (to be codified as amendment to Crim. Proc. Code art. 15.26) (emphasis added). Thus, the submitted arrest warrant and the supporting affidavit for the warrant are made public and must be released under article 15.26 of the Code of Criminal Procedure. As a general rule, the exceptions to disclosure found in chapter 552 of the Government Code do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). We have marked the information that must be released.

We next note that some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022 provides that

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:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the remaining information includes completed reports made of, for, or by a governmental body. The department must release the completed reports under section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.103 of the Government Code, which the department raises, is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 does not implicate third-party rights and may be waived). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Thus, the department may not withhold any of the information that is subject to section 552.022(a)(1) under section 552.103.

The department also claims that the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the remaining information relates to a pending criminal investigation and prosecution. Based on your representation, we find that section 552.108(a)(1) is applicable in this instance. *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).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information, with the exception of the arrest warrant and the affidavit for the warrant, under section 552.108(a)(1).

In summary, the department must release the arrest warrant and the affidavit for the warrant under article 15.26 of the Code of Criminal Procedure. The department may withhold the remaining information under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c). As we are able to make these determinations, we need not address the department’s claims under sections 552.119 and 552.130.

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

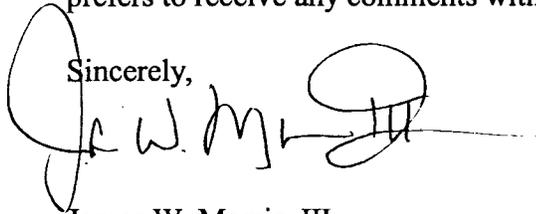
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a large, stylized initial 'J' on the left.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 189130

Enc: Submitted documents

c: Mr. Adam R. Hardison
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(w/o enclosures)