



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2003

Mr. John Feldt  
Assistant District Attorney  
Civil Division  
Denton County  
P.O. Box 2850  
Denton Tx 76202

OR2003-8127

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 191061.

The Denton County Criminal District Attorney's Office (the "District Attorney") received a request for eight categories of information pertaining to the requestor's son. The requestor also asks for the bases of certain decisions made by the District Attorney. We note that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989); *see also AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681(Tex. App.–Eastland, pet. denied). You assert the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111,<sup>1</sup> and 552.130 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim. Additionally, we considered comments submitted by the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit comments explaining why information should or should not be released).

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<sup>1</sup>You also raise section 552.107 in conjunction with the work product privilege. However, we note that section 552.111 is the appropriate exception to raise for the work product privilege. Open Records Decision No. 677 at 4 (2002).

We begin by addressing the requestor's argument that the District Attorney waived its arguments by failing to meet the requirements of section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Furthermore, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The requestor contends that the District Attorney failed to adequately state the exceptions that apply in accordance with section 552.301(a) and (b), and also failed to provide a detailed explanation as to why the exceptions it raised apply. However, the District Attorney submitted a letter to this office on September 8, 2003, raising the exceptions it believes apply to the requested information. In addition, the District Attorney submitted a letter to this office on September 12, 2003, explaining why the exceptions it raised apply to the requested information. Therefore, we find that the District Attorney provided the information required under section 552.301 and the requested information is not presumed public under section 552.302 of the Government Code.

Next, we note that the submitted information includes an arrest warrant and supporting affidavit. 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 Code Crim. Proc. art. 15.26) (emphasis added). Thus, article 15.26 makes the submitted warrant and supporting affidavit expressly public. Therefore, the District Attorney must release the information we have marked, in its entirety, in accordance with article 15.26 of the Code of Criminal Procedure.

Some of the remaining submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides as follows:

[T]he 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 case, the submitted information contains completed police department reports. Thus, the District Attorney must release this information, unless it is expressly confidential under other law or excepted from disclosure under section 552.108. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code and the work product privilege, as incorporated into the Public Information Act by section 552.111 of the Government Code. However, sections 552.103 and 552.111 are discretionary exceptions to disclosure and are not other law that makes information confidential for the purposes of section 552.022(a). *See* Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive statutory predecessor to section 552.111), 470 at 7 (1987) (governmental body may waive section 552.111); *see also 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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 522 at 4 (1989) (discretionary exceptions in general).

We note that the attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. Recently, the Texas Supreme Court held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). The Texas Rules of Civil Procedure, however, only apply to “actions of a civil nature.” Tex. R. Civ. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 does not apply to the criminal matter at issue here. Therefore, the District Attorney may not withhold the completed police reports under section 552.103 or 552.111 of the Government Code or rule 192.5 of the Texas Rules of Civil Procedure. However, as you also assert

section 552.108 of the Government Code, we will address your arguments under this exception for the information that is subject to section 552.022 as well as the remaining submitted information.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal case. Based upon this representation, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *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).

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). 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, the District Attorney must release basic information under section 552.108(c) of the Government Code.

In summary, the District Attorney must release the submitted arrest warrant and supporting affidavit in accordance with article 15.26 of the Code of Criminal Procedure. With the exception of basic information, the District Attorney may withhold the remaining submitted information under section 552.108 of the Government Code.<sup>2</sup>

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

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<sup>2</sup> As we make this determination, we need not address your other claimed exceptions.

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).

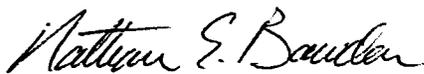
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/seg

Ref: ID# 191061

Enc: Submitted documents

c: Mr. Gary R. Eitel  
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(w/o enclosures)