



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2004

Mr. David K. Walker  
County Attorney  
Montgomery County  
210 West Davis, Suite #400  
Conroe, Texas 77301

OR2004-3723

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202656.

The Montgomery County Sheriff's Department received a request for information regarding a sexual assault. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that within the information requested is a Capias Pro Fine. Article 15.26 of the Code of Criminal Procedure states that an "arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." *See* Crim. Proc. Code Art. 45.045 (court may order issuance of capias pro fine to arrest defendant who is not in custody when judgment is rendered or if defendant fails to satisfy judgment). Therefore, the Capias Pro Fine is public under article 15.26 of the Code of Criminal Procedure and must be released to the requestor.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, arrest, or crime. Gov't Code § 552.108(c). We believe such basic information refers to the

information held to be public in *Houston Chronicle Publishing 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). Basic information includes the identification and description of the complainant. Open Records Decision No. 127 (1976). The submitted police report contains information about an alleged sexual assault. Generally, information that tends to identify a victim of an alleged sexual assault is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), and 339 (1982). In this case, however, the requestor is the victim of the alleged sexual assault. Therefore, the requestor has a special right of access pursuant to section 552.023 to information that is otherwise private because the requestor is the complainant. See Gov't Code § 552.023(a) (providing that an individual has a limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual's privacy interest); see also Open Records Decision No. 481 at 4 (1987) (stating that privacy theories not implicated when an individual asks a governmental body to provide her with information concerning herself).<sup>1</sup>

Thus, with the exception of the Capias Pro Fine and basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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

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<sup>1</sup>We emphasize that because the information to be released pursuant to section 552.023 is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or the requestor's authorized representative, the department should again seek our decision.

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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 202656

Enc. Submitted documents

c: requestor  
(w/o enclosures)