



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2004

Mr. Todd Sellars  
Assistant District Attorney  
Dallas County  
411 Elm Street  
Dallas, Texas 75202

OR2004-5926

Dear Mr. Sellars:

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# 205341.

The District Attorney's Office of Dallas County (the "DA") received a request for information regarding the prosecution of a named individual for burglary, as well as all other information pertaining to the individual. You state that you do not possess some of the requested material.<sup>1</sup> You also state that some of the requested information will be released to the requestor, but claim that the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that, although you assert you attempted to seek clarification of the request for information, you submitted information that you indicate is responsive to the request and excepted from disclosure. Accordingly, we will address your claimed exception to disclosure regarding the submitted information. However, if the requestor responds to the request for

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<sup>1</sup>We note that the Act does not require the DA to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986); see also Attorney General Opinion JM-48 (1983) (governmental body not required to comply with standing request for information to be collected or prepared in future).

clarification and the DA determines that other information is responsive to the request, the DA must seek another ruling from this office before withholding any such information from the requestor. *See Gov't Code § 552.222(b)* (if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also* Open Records Decision No.663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification).

Next, we note that the submitted information includes an arrest warrant and arrest warrant affidavit. Article 15.26 of the Code of Criminal Procedure states the following:

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.

Therefore, these documents are made public under article 15.26. Exceptions to disclosure under the Act generally do not apply to information that is made public by other statutes, such as article 15.26 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the arrest warrant and arrest warrant affidavit that we have marked must be released to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks, in part, for all information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Thus, where the named individual is a possible suspect, arrestee, or defendant in the remaining requested information, we conclude that you must generally withhold such information under common law privacy as encompassed by section 552.101 of the Government Code on the basis of *Reporters Committee*. *See id.*

However, we note that when a requestor asks for information relating to a particular incident, the request does not implicate the privacy concerns expressed in *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records. Thus, you may not withhold any of the remaining information pertaining to the burglary investigation under section 552.101 in conjunction with common

law privacy on the basis of *Reporter's Committee*. Therefore, we will address your section 552.108 argument regarding this information.

Section 552.108(a)(2) of the Government Code 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 burglary case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

We note, however, section 552.108 does not except 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 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested burglary 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.

However, the requestor has a special right of access to criminal history record information ("CHRI") contained in all of the submitted information. The requestor is a staff investigator with the State Board for Educator Certification (the "SBEC"), who states that the SBEC is conducting an investigation of an individual who has applied for or currently holds educator credentials. Section 22.082 of the Education Code provides that the SBEC "shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to an applicant for or holder of a certificate." CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Accordingly, we conclude that the DA must release to this requestor any CHRI found within the submitted information.<sup>2</sup> See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

To conclude, (1) the marked arrest warrant and arrest warrant affidavit must be released pursuant to article 15.26 of the Code of Criminal Procedure, (2) any information in the remaining requested information where the individual is a possible suspect, arrestee, or defendant, except for the specifically requested information pertaining to the burglary case,

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<sup>2</sup>Because the requestor has a special right of access to this information in this instance, the DA must seek another decision from this office if it receives a request for the same information from a different requestor.

is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy on the basis of *Reporters Committee*, (3) all but the basic information in the burglary case is excepted from release under section 552.108(a)(2) of the Government Code, and (4) any CHRI in the submitted information must be released to the requestor pursuant to section 22.082 of the Education Code. The remaining information must be released to the requestor.

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).

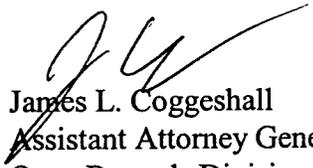
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 205341

Enc. Submitted documents

c: Mr. Tracy Thomas  
Staff Investigator  
Professional Discipline Unit  
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(w/o enclosures)