



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2004

Mr. Barry L. Spencer, Jr.
Assistant District Attorney
Henderson County
109 West Corsicana Street, Suite 103
Athens, Texas 75751

OR2004-6536

Dear Mr. Spencer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206362.

The Henderson County District Attorney's Office (the "office") received a request for complete copies of all documentation pertaining to Cause Nos. C-10,451 and C-10,452, as well as any documentation relating to any charges currently pending against a named individual other than documentation filed in Cause Nos. C-10,451 and C-10,452.¹ You claim that the requested 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 this request implicates section 552.101 of the Government Code, which 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 *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all documentation relating to any charges currently pending against a named individual other than

¹ Because the submitted documentation relating to Case Nos. C00-43294, C01-06375, and C01-06376 pertains to cases that are no longer pending, this documentation is not responsive to the instant request and is therefore not addressed in this ruling.

documentation pertaining to Cause Nos. C-10,451 and C-10,452. In this case, we believe that the individual's right to privacy has been implicated. Thus, where the named individual is a possible suspect or arrestee in cases other than Cause Nos. C-10,451 and C-10,452, this information would normally be confidential under *Reporters Committee*, and thus excepted from release under section 552.101. However, section 552.023(a) of the Government Code affords a person or person's authorized representative a special right of access to information otherwise protected from public disclosure by laws intended to protect that person's privacy interests. As the requestor in this instance is the individual's authorized representative, you may not withhold any information from the requestor under section 552.101 on the basis of the individual's right to privacy to the extent that such information exists.

Included among the documents in Cause Nos. C-10,451 and C-10,452 that you seek to withhold are arrest warrants and supporting affidavits. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Thus, the office must release the arrest warrants and supporting affidavits to the requestor.

Cause Nos. C-10,451 and C-10,452 also include documents that have been filed with the court. Information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, these public court documents must be released to the requestor unless they are confidential under other law. Section 552.108 is a discretionary exception under the Public Information Act, and is therefore not considered "other law" that makes information confidential. *See* Open Records Decision No. 586 (1991) (governmental body may waive section 552.108). Thus, these court documents must be released to the requestor pursuant to section 552.022.

We now consider your arguments against disclosure for 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 documentation in Cause No. C-10,451 relates to a criminal case currently pending appeal. You also state that Case Nos. C01-09959 and C01-02611 are active investigations pending with grand juries. Based upon these representations, we conclude that the release of the remaining documentation in Cause No. C-10,451, as well as in Case Nos. C01-09959 and C01-02611, 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).

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 submitted documentation in Cause No. C-10,452 pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Therefore, we conclude that section 552.108(a)(2) is applicable to the remaining documentation in Cause No. C-10,452.

However, section 552.108 is inapplicable to 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, as well as the arrest warrants, supporting affidavits and court documents previously addressed, the office may withhold from disclosure 1) all remaining documentation in Cause No. C-10,451, as well as in Case Nos. C01-09959 and C01-02611, based on section 552.108(a)(1), and 2) all remaining documentation in Cause No. C-10,452 based on section 552.108(a)(2).

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,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 206362

Enc. Submitted documents

c: Ms. Donna C. Peavler
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(w/o enclosures)