



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 9, 2004

Ms. Ylise Janssen  
Senior School Attorney  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703

OR2004-6722

Dear Ms. Janssen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206881.

The Austin Independent School District (the "district") received a request for information pertaining to a specified internal affairs investigation. The district received a second request from a different requestor for twenty-two categories of information related to the former district employee who was the subject of the internal affairs investigation. You state that the district is releasing some of the requested information to the second requestor. You claim that the remaining requested information that is responsive to both requests for information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the submitted information includes an arrest warrant affidavit. The 78th Legislature has 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.

Crim. Proc. Code art. 15.26. As a general rule, the exceptions to disclosure found in the Public Information Act (the "Act") 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 note that because we are unable to determine whether the submitted arrest warrant affidavit was presented to a magistrate in support of the issuance of an arrest warrant, we must rule in the alternative. Thus, to the extent that the arrest warrant affidavit that we have marked was, in fact, "presented to the magistrate in support of the issuance of an arrest warrant," it is made public by article 15.26 of the Code of Criminal Procedure and must be released to the requestors. However, to the extent that the marked arrest warrant affidavit was not so presented, it is not made public by article 15.26 and may be disposed of in accordance with the remainder of this ruling.

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a)(1) excepts from 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[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You acknowledge that the remaining submitted information pertains to an internal administrative investigation that was conducted by the district's police department. We note that section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, in this instance, you inform us that the remaining submitted information also relates to a prosecution that is pending with the Travis County Attorney's Office (the "county attorney").

In this regard, you have provided us with a letter from an Assistant County Attorney with the county attorney in which she states that the information at issue relates to an active criminal case that is pending prosecution with the county attorney. Thus, we understand the district to contend that the release of the remaining submitted information would interfere with the detection, investigation, and prosecution of crime. Based on your representations, the representations of the county attorney, and our review of the remaining submitted information, we find that section 552.108(a)(1) is applicable to this information. *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); *see also* Open Records Decision Nos. 372 at 4 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of information relating to incident allegedly involving

criminal conduct that remains under active investigation or prosecution), 350 at 3-4 (1982) (if complaint against police officer that may result in criminal charges is under active investigation, information may be withheld under statutory predecessor during pendency of investigation); *cf. City of Fort Worth v. Cornyn*, 86 S.W.3d 320, (Tex. App.–Austin 2002, no pet.); Open Records Decision No. 562 at 10 (1990). Accordingly, we conclude that the district may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code.

In summary, to the extent that the marked arrest warrant affidavit was, in fact, "presented to the magistrate in support of the issuance of an arrest warrant," it is made public by article 15.26 of the Code of Criminal Procedure and must be released to the requestors. To the extent that it was not so presented, it may be withheld from the requestors, along with the remaining submitted information, pursuant to section 552.108(a)(1) of the Government Code.

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,



~~For~~  
Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

LEK/RJB/krl

Ref: ID# 206881

Enc. Marked documents

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