



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 23, 2004

Sheriff Tom Maddox
Sabine County Sheriff's Office
P.O. Box 848
Hemphill, Texas 75948

Mr. John C. Fisher
District Attorney
First Judicial District of Texas
P.O. Box 740
San Augustine, Texas 75972

OR2004-9989

Dear Sheriff Maddox and Mr. Fisher:

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# 213561.

The Sabine County Sheriff's Office (the "sheriff") and the Sabine County District Attorney (the "Sabine D.A.") received requests for all information related to theft charges brought against two named individuals. Both the sheriff and the Sabine D.A. claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have also received and considered comments from the Titus County District Attorney (the "Titus D.A."). *See Gov't Code § 552.304* (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we note that the submitted information includes court-filed documents, which are expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See Gov't Code § 552.022(a)(17)*. Sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived by the governmental body. *See Open Records Decision No. 177*

(1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, these exceptions do not constitute other law for purposes of section 552.022, and the court-filed documents may not be withheld pursuant to these exceptions. These documents must be released in accordance with section 552.022(a)(17).

Also, included among the documents you seek to withhold are arrest warrants. 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, you must release the arrest warrants to the requestor. *See also* Open Records Decision No. 623 at 3 (1994) (exceptions to public disclosure under chapter 552 of Government Code generally do not apply to information that another statute expressly makes public).

We turn now to your arguments regarding the remaining submitted information. Section 552.108 of the Government Code 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.” Gov’t Code § 552.108(a)(1). 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). Where an agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to withhold the information. The sheriff, the Sabine D.A., and the Titus D.A. inform us that the remaining submitted information pertains to a pending prosecution of the Titus D.A. In addition, the Titus D.A. informs us that he objects to the release of the information because its release would interfere with the pending prosecution. Based on these representations and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to the remaining submitted 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 No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information which relates to incident).

However, section 552.108 does not except basic front page information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic front page information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Thus, the sheriff and Sabine D.A. must release the types of information that are considered to be basic front page information, even if this information is not actually

located on the front page. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). The remaining submitted information may be withheld pursuant to section 552.108(a)(1).¹ We note that you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, the marked court documents must be released pursuant to section 552.022(a)(17), and the marked arrest warrants must be released pursuant to article 15.26. With the exception of basic front page information, which must be released to the requestor, the remaining information may be withheld under section 552.108(a)(1).

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).

¹Because we reach this conclusion, we need not consider whether section 552.103 also applies to this information. We note that section 552.103 does not except basic front page information from disclosure. Open Records Decision No. 597 (1997).

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 213561

Enc. Submitted documents

c: Ms. E. M. Farrell
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