



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2004

Ms. Carol Day-Moss
Assistant District Attorney
Hunt County
P.O. Box 441
Greenville, Texas 75403-0441

OR2004-10467

Dear Ms. Day-Moss:

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# 214745.

The Hunt County Sheriff's Office (the "sheriff") received a request for information relating to a named individual.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, and 552.130 of the Government Code.

¹We note that the present request is for "any and all records" regarding a named individual. Ordinarily, a request for unspecified law enforcement information would implicate the named individual's common-law right to privacy under section 552.101. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993). The submitted documents also contain specific types of information that the sheriff would be required to withhold from the public under laws that are intended to protect the named individual's privacy interests. In this instance, however, the individual in question has consented to the release of his private information to the requestor. Therefore, the requestor has a special right of access to such information, and it may not be withheld from her on privacy grounds. *See Gov't Code* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Should the sheriff receive another request for this same information from a person who would not have a special right of access to it, the sheriff should resubmit this information and request another decision. *See Gov't Code* §§ 552.301(a), .302.

We have considered the exceptions you claim and have reviewed the information you submitted.²

We first note that the information submitted as Exhibit C includes an arrest warrant and a complaint. The 78th Legislature 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. Thus, article 15.26 makes the submitted arrest warrant public. As a general rule, the exceptions to disclosure found in 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). Therefore, the sheriff must release the arrest warrant that we have marked under article 15.26 of the Code of Criminal Procedure.

With regard to the complaint, article 15.04 of the Code of Criminal Procedure provides that "[t]he *affidavit* made before the magistrate or district or county attorney is called a 'complaint' if it charges the commission of an offense" (emphasis added). Case law indicates that a complaint can support the issuance of an arrest warrant. *See Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref'd); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref'd) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). In this instance, the complaint that we have marked was presented to a magistrate in support of the issuance of the submitted arrest warrant. Therefore, the sheriff must also release the complaint under article 15.26 of the Code of Criminal Procedure.

Exhibit C also contains information that is subject to section 552.022 of the Government Code. This section provides that

²This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Thus, the sheriff must release the information in Exhibit C that also is contained in a public court record under section 552.022(a)(17) unless the information is expressly confidential under other law. Although you seek to withhold all of the information in Exhibit C under sections 552.103 and 552.108, we note that these are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 subject to waiver), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, sections 552.103 and 552.108 are not other law that makes information confidential for the purposes of section 552.022. Therefore, the sheriff may not withhold the information that is subject to section 552.022(a)(17) under sections 552.103 or 552.108. As the sheriff claims no other exception to the disclosure of the information that is subject to section 552.022(a)(17), which we have marked, that information must be released to the requestor.

Next, we address section 552.101 of the Government Code. This section excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."³ Gov't Code § 552.101. You assert that section 552.101 is applicable to all of the information submitted as Exhibit C because "the 354th Judicial District Court has sealed the records in Cause No. 21,988, *The State of Texas v. David Jason Jacks*." We note that Exhibit C includes a copy of a "Temporary Order Prohibiting Prejudicial Publicity." However, that order was entered by the 354th Judicial District Court in the case of *The State of Texas v. Lavace Durell Morgan*, Cause No. 21,838. You have not explained how or why the order in *State v. Morgan* would be applicable to information that relates to *State v. Jacks*, which is the case to which Exhibit C pertains. Furthermore, you have not directed our attention to any law under which all of the information in Exhibit C would be confidential. We therefore conclude that the sheriff may not withhold Exhibit C under section 552.101.

³We note that you did not raise section 552.101 within the ten-business-day period prescribed by section 552.301. *See* Gov't Code §§ 552.301(b), .302. Nevertheless, we will address this exception, because the Act prescribes criminal penalties for the release of confidential information. *See id.* §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

We note, however, that Exhibit C includes medical records. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). We also have concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked the medical records that are confidential under the MPA. We note that the requestor has submitted an authorization for release of records, signed by the individual to whom the submitted medical records pertain. Thus, the requestor may have a right of access to the medical records. In any event, the medical records must not be released unless the sheriff has authorization under the MPA to do so. *See* Open Records Decision No. 598 (1991).

Exhibits C, D, E, and F also include fingerprint information that is subject to sections 560.001, 560.002, and 560.003 of the Government Code. These sections provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

(1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Govt. Code §§ 560.001, 560.002, 560.003. We have marked fingerprint information that is confidential under section 560.003. Based on the authorization for release of records that the requestor submitted to the sheriff, she appears to have consent to the release of the fingerprint information under section 560.002. *See id.* § 560.002(1)(A). If so, then the fingerprint information must be released to this requestor. Otherwise, the sheriff must withhold the fingerprint information under sections 552.101 and 560.003 of the Government Code.

Next, we address your claims under section 552.108. Section 552.108(a)(1) excepts from public 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 this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the information in Exhibit C relates to a pending criminal prosecution. Based on your representations, we find that section 552.108(a)(1) is applicable to the remaining information in Exhibit C. *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).

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that the information submitted as Exhibit F relates to a case that was dismissed. You also inform us that Exhibit G relates to a case that was no-billed by the grand jury. You state that these cases did not result in a final conviction or deferred adjudication. Based on your representations, we find that section 552.108(a)(2) is applicable to Exhibits F and G.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The sheriff must release basic information with respect to Exhibits C, F, and G, including detailed descriptions of the offenses, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff may withhold the remaining information in Exhibits C, F, and G under section 552.108.

In summary: (1) the arrest warrant and complaint in Exhibit C must be released under article 15.26 of the Code of Criminal Procedure; (2) the information in Exhibit C that also is contained in a public court record must be released under section 552.022(a)(17); (3) the sheriff must not release the medical records in Exhibit C that are confidential under the MPA unless he has authorization under the MPA to do so; (4) the fingerprint information in Exhibits C, D, E, and F must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, unless the requestor has consent for the release of the fingerprints under section 560.002; and (5) except for the basic information that must be released under section 552.108(c), the sheriff may withhold the

remaining information in Exhibits C, F, and G under section 552.108. The sheriff must release the rest of the submitted information. As we are able to make these determinations, we need not address your other arguments against disclosure.⁴

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).

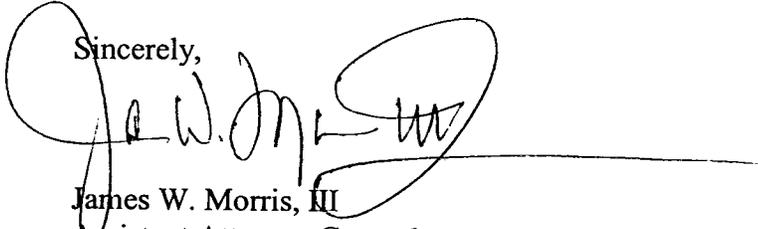
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

⁴We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 214745

Enc: Submitted documents

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(w/o enclosures)