



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 22, 2005

Mr. Robert E. Hager  
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Dallas, Texas 75201

OR2005-02442

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 221633.

The Rowlett Police Department (the “department”), which you represent, received a request for “all pertinent records and public information” concerning a specified incident that occurred on January 4, 2005.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov’t Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

We begin by noting that the submitted documents include an arrest warrant and supporting affidavit. Article 15.26 of the Code of Criminal Procedure provides:

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<sup>1</sup> In particular, the requestor specifically requests call for service, arrest, and booking records; 9-1-1 call records, including audio recordings; audio recordings of police radio transmissions; records of police vehicle mobile data terminal transmissions; police and jail video recordings; records identifying personnel of the department on duty on January 4, 2005 and City of Rowlett jail personnel on duty on January 4, 2005; records identifying persons booked into the jail facility on January 4, 2005, and records identifying persons detained at the facility on that date; and any other arrest and offense information maintained by the department related to the incident at issue.

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. This provision makes the submitted arrest warrant and supporting affidavit expressly public. The exceptions found in the Public Information Act do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the submitted arrest warrant and supporting affidavit, including Appendix A, must be released to the requestor without redactions.

The submitted documents also contain a court record signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Sections 552.103 and 552.108 of the Government Code are discretionary exceptions that protect a governmental body's interests and is therefore not "other law" that makes court records confidential for purposes of section 552.022. *See 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 No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus, the court record in the submitted information may not be withheld pursuant to section 552.103 or section 552.108. As you raise no other exceptions for the court record, we determine that this record, which we have marked, is not excepted from disclosure and must be released.

We next address your claim under section 552.108 with respect to the remaining submitted information. Section 552.108(a) 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."<sup>2</sup> 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).

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<sup>2</sup> You also raise section 552.103 for the remaining submitted information. Section 552.103 can except information related to pending litigation involving a governmental body. Because your claim under section 552.103 is predicated on your claim that the remaining submitted information relates to a pending criminal prosecution, we address this claim under section 552.108 of the Government Code.

You indicate that the remaining submitted information relates to a pending criminal prosecution. You have not explained, nor is it apparent from our review of the information, how release of the submitted duty rosters for police and jail personnel on January 4, 2004, would interfere with the investigation or prosecution of the offense at issue. We therefore determine the department may not withhold the duty rosters under section 552.108. We further find, however, that the remaining submitted information is related to the pending prosecution and that its release 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) (court delineates law enforcement interests that are present in active cases). Accordingly, we find that section 552.108 is applicable to the remaining information.

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See Open Records Decision No. 127* (1976) (summarizing types of information considered to be basic information). Basic information about a specific arrest or crime includes the types of information typically found on the front page of an offense report, even if such information is not actually located on the front page of the report. Furthermore, basic information held to be public in *Houston Chronicle* also encompasses information identifying persons arrested on a particular date. *See Houston Chronicle*, 531 S.W.2d at 185. Thus, basic information about the offense and arrest at issue, as well as information responsive to the request for records of all persons booked into the City of Rowlett jail facility on January 4, 2005, is not excepted from disclosure under section 552.108 and may not be withheld on that basis. The remaining information, however, is excepted under section 552.108(a)(1) of the Government Code and may be withheld.<sup>3</sup>

With respect to the booking records, however, we understand you to contend that information identifying persons booked into the City of Rowlett jail facility on the date in question is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. You contend that these documents “are confidential criminal history summarized by a governmental entity and release of the same would implicate the individual's right to privacy.” We understand you to contend that the information at issue represents a compilation of an individual's criminal history by the department, which is protected by common-law privacy. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and

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<sup>3</sup> Based on this finding, we do not reach your claim under section 552.103, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103. *Open Records Decision No. 597* (1991).

(2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See Reporters Comm.*, 489 U.S. 749; *see also* Open Records Decision No. 616 at 2-3 (1993). In this instance, however, the request does not require the department to compile an individual's criminal history, but rather asks for basic information concerning individuals booked into jail on a particular date. We determine that the submitted booking information is not a compilation of an individual's criminal history and is therefore not protected by common-law privacy. Accordingly, the booking records at issue are not excepted under section 552.101 and must be released to the requestor.

In summary, the department must release the submitted arrest warrant and supporting affidavit, including Appendix A, without redactions pursuant to article 15.26 of the Code of Criminal Procedure. A court-filed document must be released pursuant to section 552.022(a)(17) of the Government Code. Basic information concerning the offense and arrest at issue and basic information concerning persons arrested and booked into jail on the date in question must be released to the requestor. Duty rosters for police and jail personnel are not excepted from disclosure and must be released. The remaining submitted information is excepted from disclosure pursuant to section 552.108(a)(1) and may be withheld. We note that the department has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DRS/sdk

Ref: ID# 221633

Enc: Submitted documents

c: Mr. Ernest Reynolds, III  
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