



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2005

Mr. John C. West
Office of the Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2005-04222A

Dear Mr. West:

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# 224129.

This office issued Open Records Letter No. 2005-04222 (2005) on May 16, 2005. In that ruling, we determined the Office of the Inspector General (the "OIG") for the Texas Department of Criminal Justice ("the department") had failed to timely submit information under the Act's statutory deadlines. However, we have now determined that the OIG complied with the Act in a timely manner.¹ See Gov't Code 552.301 (addressing governmental bodies procedural obligations under the Act). Consequently, this decision serves as the correct ruling on this request and is a substitute for the decision issued on May 16, 2005. See generally Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Act).

The Texas Department of Criminal Justice (the "department") received a request for information related to the requestor, a department employee. You state that you have

¹ We note a governmental body is required to inform the Office of the Attorney General ("OAG") in the governmental body's briefing under section 552.301 of the Government Code of any holiday, including skeleton crew days, observed by the governmental body. If the OAG is not notified of holidays the governmental body observes, the applicable deadlines under the Act may be calculated to include those days.

released some information but claim that the submitted criminal and administrative investigations are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The submitted information includes an arrest warrant, complaints, and a probable cause affidavit. 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.” Crim. Proc. Code art. 15.26. 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.” Crim. Proc. Code art. 15.04. 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). 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 OIG must release the submitted arrest warrant and complaint that were signed by a magistrate. To the extent the submitted affidavit and other submitted complaint were presented to a magistrate in support of the issuance of the arrest warrant, they are public under article 15.26 of the Code of Criminal Procedure and must be released. To the extent these documents were not so presented, they are not made public by article 15.26 and we will address them together with the remaining information at issue.

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). However, section 552.108(a)(1) is generally not applicable to the records of an internal investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to Gov’t Code § 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state that release of the submitted criminal and administrative investigations would interfere with the criminal investigation itself. Based on your representations and our review, we determine that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime, and we therefore agree 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).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, the OIG must release the basic information from the submitted investigations.

We note that the submitted investigations include the social security number of the requestor. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold, among other things, the social security number of a current or former employee of the department under section 552.117(a)(3) of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). In this instance, however, the requestor possesses a special right of access to his own social security number. See Gov't Code § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Therefore, the requestor's social security number must be released to him.

In summary, the submitted arrest warrant and complaint that were signed by a magistrate must be released pursuant to article 15.26. To the extent the submitted affidavit and other complaint were presented to a magistrate in support of the issuance of an arrest warrant, they must be released pursuant to article 15.26. To the extent this affidavit and complaint were not so presented to a magistrate, they may be disposed of with the other submitted information. The requestor's social security number must be released to him. Except for basic information, the OIG may withhold the remaining submitted information under section 552.108. We note that the OIG has discretion to release all or part of this remaining submitted 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 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 224129

Enc. Submitted documents

c: Mr. Justin A. Griffin
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(w/o enclosures)