



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2005

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2902

OR2005-05067

Dear Ms. Longoria:

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# 225733.

The University of Texas at Austin (the "university") received a request for "all incident reports, offense reports, arrest warrants, notice of service of such warrants, complaints, and affidavits requesting arrest warrants" related to the arrest of a named individual on a specified date, and for "copies of any and all communication[s] between [the university's police department] and the Austin Police Department regarding complaints against [the named individual] and requests for jurisdictional assistance in serving and detaining [the named individual]." You state that the university will release some information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information that is responsive to the request for copies of communications between the university's police department and the Austin Police Department. We assume the university has released this information to the requestor. If it has not, it must do so at this time to the extent that such information existed on the date the university received the request for information. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental

body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note that the submitted information includes an arrest warrant, supporting affidavit, and a complaint. Article 15.26 of the Code of Criminal Procedure provides:

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.

Code Crim. Proc. art. 15.26 (emphasis added). The submitted arrest warrant and supporting affidavit are made public by this provision. The exceptions found in the 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). Further, 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.” *Id.* art. 15.04 (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). Thus, a complaint that was submitted to a magistrate in support of the issuance of an arrest warrant is made public by and must be released under article 15.26 of the Code of Criminal Procedure. Accordingly, the university must release the submitted arrest warrant and supporting affidavit to the requestor. Further, if the submitted complaint was presented to the magistrate in support of the issuance of an arrest warrant, then the university must release it to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. However, if the complaint was not so presented, it is not made public by this statute and is subject to our ruling regarding the remaining information.

Section 552.108(a)(1) excepts from required 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[.]” 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 advise that the submitted information has been referred to the Travis County District Attorney’s Office, and that prosecution of the offense is currently

pending. You assert that the release of this information at this time would interfere with that prosecution. Based on your representations, we find that section 552.108(a)(1) is applicable in this instance. 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).

We note that 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*. See *Houston Chronicle*, 531 S.W.2d at 186-87. The university must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The university may withhold the rest of the submitted information, including the information you have marked in red on the first page of the submitted incident report, under section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, the university must release the arrest warrant and supporting affidavit pursuant to article 15.26 of the Code of Criminal Procedure. Further, if the submitted complaint was presented to the magistrate in support of the issuance of an arrest warrant, then the university must also release it to the requestor pursuant to article 15.26. With the exception of basic information, which must be released, the university may withhold the remaining submitted information under section 552.108(a)(1). As our ruling is dispositive, we need not consider your remaining claimed exceptions.

We note that you ask this office to issue the University of Texas System a previous determination allowing the University of Texas System to withhold Texas motor vehicle driver’s license, title, and registration information from disclosure under section 552.130 of the Government Code without the necessity of requesting an attorney general opinion. We decline to issue a previous determination to the University of Texas System at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us and may 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).

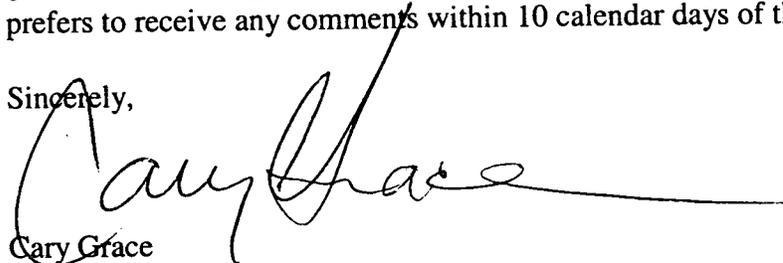
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read 'Cary Grace', with a long horizontal line extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECCG/jev

Ref: ID# 225733

Enc. Submitted documents

Ms. Carol Longoria - Page 5

c: Mr. Cary Cardwell
401 East Mistletoe
San Antonio, Texas 78212
(w/o enclosures)