ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2005

Mr. Darrel G-M Noga
Fee, Smith, Sharp & Vitullo LLP
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2005-10859

Dear Mr. Noga:

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# 237864.

The City of Coppell (the "city"), which you represent, received a request for the arrest records of the requestor. You state that some of the information will be released, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1]

Initially, we note that the submitted information includes arrest warrants and supporting affidavits. Article 15.26 of the Code of Criminal Procedure provides the following:

> 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

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

> to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26. 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 arrest warrants and supporting affidavits, which we have marked, must be released pursuant to article 15.26 of the Code of Criminal Procedure.

You assert that Exhibit 5 is excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) reads as follows:

> Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:
>
> (1) if maintained on paper or microfilm, kept separate from adult files and records;
>
> (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
>
> (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Exhibit 5 contains information that involves juvenile conduct occurring after September 1, 1997. None of the exceptions in section 58.007 appears to apply. Therefore, Exhibit 5 is confidential pursuant to section 58.007(c) of the Family Code and the city must withhold it under section 552.101 of the Government Code.

You assert that the remaining information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from 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 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), 552.301(e)(1)(A); *see also*

Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information relates to offenses that are "now being prosecuted." Based on this representation, we conclude that the release of the remaining information 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.*, 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*. Thus, with the exception of the basic front-page offense and arrest information, the city may withhold the remaining information under section 552.108(a)(1).

To conclude, the city must release the marked arrest warrants and supporting affidavits pursuant to article 15.26 of the Code of Criminal Procedure. The city must withhold Exhibit 5 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of the basic front-page offense and arrest information, the city may withhold the remaining information under section 552.108(a)(1). As our ruling is dispositive, we do not address your other arguments for exception of the information at issue.[2]

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

---

[2]We note that the requestor has a right of access to information in the submitted documents that otherwise would be excepted from release under the Act. *See* Gov't Code § 552.023. Thus, the city must again seek a decision from this office if it receives a request for this information from a different requestor.

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); *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 Office of the Attorney General 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. 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 237864

Enc. Submitted documents

c: Mr. Michael Uzelac
216 Hollywood Drive
Coppell, Texas 75019
(w/o enclosures)