



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2005

Mr. Boyd Kennedy
Staff Attorney
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2005-11745

Dear Mr. Kennedy:

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# 239482.

The Texas Department of Parks and Wildlife (the "department") received two requests, from the same requestor, for ten categories of information related to a specified citation and arrest involving the requestor and department incidents similar to that arrest. You state you have released information responsive to eight categories of the request but seek to withhold information responsive to the requests for 1) "any complaints submitted against [the department] alleging violations by [department] officers," and 2) the specified citation and related report. You claim that the information responsive to these parts of the request is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted complaints, citation, and case report.

Initially, we note that some of the submitted information is not responsive to the parts of the request for which you seek a ruling, rather this information appears to be responsive to another part of the request to which you state the department has already responded.

¹Although you initially raised section 552.101 of the Government Code, you have submitted no arguments under this exception.

Information that is not responsive to the parts of the request at issue, which we have marked, need not be released. Moreover, we do not address such information in this ruling.

Next, we note that the submitted information includes an executed search warrant and supporting affidavit. Section 552.022 of the Government Code provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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 the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes the executed search warrant, which has been signed by a magistrate, expressly public. Therefore, the department may withhold this information only to the extent it is made confidential under other law. Although the department raises sections 552.103 and 552.108 of the Government Code for this information, these exceptions are discretionary and, thus, do not make information confidential. *See, e.g., 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. 586 (1991) (governmental body may waive section 552.108), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 522 at 4 (1989) (discretionary exceptions in general), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the marked search warrant may not be withheld under section 552.103 or section 552.108. As the department raises no further exceptions to the disclosure of this information, it must be released.

The release of a search warrant affidavit is governed by article 18.01 of the Code of Criminal Procedure, which provides in part:

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 18.01(b). This provision makes the search warrant affidavit at issue expressly public. 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). Therefore, pursuant to article 18.01(b), the department must release the marked search warrant affidavit.

Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. See Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Where an agency has custody of information relating to a pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency demonstrates that the information relates to the pending case and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

You state the requested information pertains to an active criminal investigation being conducted by the Grayson County District Attorney’s Office (the “district attorney’s office”). The district attorney’s office confirms that the information at issue pertains to an active criminal prosecution being handled by that office and objects to its release. Based upon the representations of the district attorney’s office and our review, we determine that release of the remaining submitted 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. 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*). Thus, with the exception of the basic information in the submitted citation and case report, the department may withhold the remaining submitted information from disclosure based on section 552.108(a)(1).² We note that the department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov’t Code § 552.007.

²Generally, basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

Finally, we note that the submitted citation contains a social security number. Section 552.147 of the Government Code³ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the social security number contained in the submitted citation under section 552.147.⁴

To conclude, the department must release the submitted search warrant and search warrant affidavit. Except for basic information, the submitted information may be withheld under section 552.108. The social security number in the submitted citation must be withheld under section 552.147.

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

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov’t Code § 552.147).

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 239482

Enc. Submitted documents

c: Mr. Carter Helm
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(w/o enclosures)