



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2006

Mr. Ignacio Pérez
Assistant City Attorney
City of McAllen
P. O. Box 220
McAllen, Texas 78505-0220

OR2006-02202

Dear Mr. Pérez:

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# 243400.

The McAllen Police Department (the "department") received a request for six categories of information related to the requestor's named client, to include information pertaining to a felony assault arrest on or about November 7, 2005. You state that you have released some responsive information. However, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.129, and 552.130 of the Government Code, as well as rule 192.5 of the Texas Rules of Civil Procedure. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted information responsive to the portion of the request pertaining to a felony assault arrest on or about November 7, 2005. You state "[t]he requested information relating to the arrest [on or about November 7, 2005] is under the custody and control of the Hidalgo County District Attorney, the City of McAllen Prosecutor, and/or the City of McAllen Police Department." Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." See Gov't Code § 552.002(a). Because you have not submitted information responsive to the part of the request pertaining to the arrest at issue, we have no basis for finding that you may withhold it under the exceptions to disclosure you raise. Thus, to the extent that this information is within the department's

possession or the department has a right of access to this information, we have no choice but to order it released per section 552.302 of the Government Code. See Gov't Code §§ 552.301, 552.302. To the extent that this information is not collected, assembled, or maintained for the department or the department does not own or have a right of access to such information, we conclude that such information is not subject to disclosure under the Act and need not be released to the requestor.

Next, we address your statement that you sought clarification from the requestor for the remainder of the request because the request was unclear. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); see also Open Records Decision No. 663 (1999) (providing that ten-day period is tolled during the clarification process). We note that the Act does not require a governmental body to answer questions or perform legal research. Open Records Decision No. 555 (1990). However, a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we consider the department to have made a good faith effort to identify information that is responsive to the remainder of the request, and we will address the applicability of your claimed exceptions to the submitted information.

First, we note that the submitted information includes arrest warrants and complaint affidavits signed by a magistrate. 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 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); *Eorsari 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). Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to the Act. See, e.g., Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, the submitted arrest warrants and complaint affidavits are public under article 15.26 of the Code of Criminal Procedure and must be released to the requestor without redactions.

The submitted information also includes intoxilyzer results. Upon the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney.

Transp. Code § 724.018. In this instance, the requestor is the attorney of the person who took the breath tests at issue. Thus, the department must release the breath test results to the requestor.

All of the remaining submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant 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

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, all of the remaining submitted information consists of completed investigations made of, for, or by the department. A completed investigation must be released under section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or confidential under other law.

Although you claim that the remaining submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code, these sections are discretionary exceptions that protect a governmental body's interests and are therefore not "other law" for purposes of section 552.022(a)(1). 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 Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). You also claim the remaining submitted information is excepted under rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held that the Texas Rules of Civil Procedure are "other law" for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." See TEX. R. CIV. P. 2. Thus, the department may not withhold any of the information that is subject to section 552.022 under rule 192.5. However, because sections 552.101, 552.129, and 552.130 of the Government Code constitute "other law" for purposes of section 552.022, we will address your arguments under these exceptions, as well as your arguments under section 552.108, for the remaining submitted information.

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. This exception encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly

objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d 668. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information that does not portray the individual as a suspect, defendant, or arrestee may not be withheld under section 552.101 on the basis of the holding in *Reporters Committee*.

In this instance, although portions of the submitted information may implicate the arrestee's privacy rights under the holding in *Reporters Committee*, we note that the requestor has a special right of access to information pertaining to his client under section 552.023 of the Government Code. Section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See Gov't Code* § 552.023. Here, the requestor is an attorney representing the individual to whom the submitted information pertains. Therefore, we conclude that the department may not withhold any of the submitted information from the requestor under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that the identifying information of complainants and witnesses in the submitted documents is confidential under article 1, section 30 of the Texas Constitution. Article 1, section 30(a) of the Texas Constitution provides as follows:

(a) A crime victim has the following rights:

(1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and

(2) the right to be reasonably protected from the accused throughout the criminal justice process.

Tex. Const. art. I, § 30(a). We note that in order for information to fall within the scope of section 552.101 of the Government Code, a statute, or constitution in this case, must explicitly require confidentiality for information. A confidentiality requirement will not be inferred from statutory or constitutional structure. *See, e.g., Open Records Decision No. 465 at 4-5 (1987)*. After reviewing your arguments and the information at issue, we do not agree that this provision of the Texas Constitution makes the identifying information at issue expressly confidential. Accordingly, we conclude that the department may not withhold any of the submitted information pursuant to section 30(a) of article I of the Texas Constitution.

Section 552.108 excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). 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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication.¹

You state that “[s]ome information being requested relates to alleged crime[s] that did not result in conviction or deferred adjudication.” Because you have not explained, marked, labeled, or in any way identified the remaining records for which you are claiming section 552.108(a)(2), this office is unable to determine whether this section applies to any of the remaining submitted information. We therefore find that the department has failed to meet its burden explaining the applicability of section 552.108(a)(2), and none of the information at issue may be withheld on this basis.

However, the remaining submitted information includes Texas motor vehicle information. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle information we have marked in the submitted documents. *See* Gov’t Code § 552.130.² We note the requestor has a special right of access to his client’s Texas motor vehicle information. *See* Gov’t Code § 552.023.

The submitted information also contain a credit card account number. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136.³ The department must, therefore, withhold the account number we have marked under section 552.136.

¹Although you also raise section 552.108(a)(1) of the Government Code for the unsubmitted information pertaining to a felony assault arrest on or about November 7, 2005, you did not raise this exception for the submitted information, and this ruling does not address the applicability of section 552.108(a)(1).

²As our ruling on this issue is dispositive, we need not address your remaining argument against disclosure of this information under section 552.129 of the Government Code.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The remaining submitted information also includes social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The social security number of the requestor’s client must be released to the requestor. *See* Gov’t Code § 552.023. However, the department must withhold the social security numbers we have marked under section 552.147.⁴

In summary, the submitted arrest warrants and complaint affidavits are public under article 15.26 of the Code of Criminal Procedure and must be released. The submitted intoxilyzer results must be released to the requestor under section 724.108 of the Transportation Code. The department must withhold the information we have marked pursuant to sections 552.130, 552.136, and 552.147 of the Government Code. The remaining submitted information must be released to the requestor.⁵

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

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.

⁵ Because the records being released contain information relating to the requestor’s client that would be excepted from disclosure to the general public to protect the client’s privacy, the department must request another ruling from our office if it receives a future request for this information from an individual other than this requestor, his client, or his client’s authorized representative.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 243400

Enc. Submitted documents

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(w/o enclosures)