



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 16, 2006

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

OR2006-02640

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# 247958.

The City of Coppell (the "city"), which you represent, received a request for a search warrant and a search warrant return involving a specified address, arrest warrant affidavits involving a named individual, and information relating to a specified police report. You inform us that the city will release some of the responsive information, including an arrest warrant and an arrest warrant affidavit. You claim that the rest of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the remaining information includes an affidavit for a search warrant. A search warrant affidavit is made public by statute if the search warrant has been executed. *See* Crim. Proc. Code art. 18.01(b). 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). Because it relates to a search warrant that has been executed, the search warrant affidavit that we have marked must be released under article 18.01 of the Code of Criminal Procedure.

We also note that some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022 provides for the required public disclosure of “information that is also contained in a public court record,” unless the information is expressly confidential under other law. Gov’t Code § 552.022(a)(17). Although you seek to withhold the information that is subject to section 552.022 under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. See Gov’t Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022. Therefore, the city may not withhold any of the information that is subject to section 552.022 under section 552.108. Although your other claimed exceptions are other law that makes information confidential for purposes of section 552.022, none of the information that is subject to this section is excepted from disclosure under section 552.101, section 552.117, section 552.130, or section 552.147. Therefore, the city also must release the information, which we have marked, that is subject to section 552.022(a)(17) of the Government Code.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108 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[.]” Gov’t Code § 552.108(a)(1). 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). You inform us that the rest of the submitted information relates to a pending criminal prosecution. Based on your representation, 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).

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*. The department 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 *Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.

Lastly, we note that 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.<sup>1</sup> The city must withhold the social security number of the arrested person under section 552.147.

In summary: (1) the city must release the marked search warrant affidavit under article 18.01 of the Code of Criminal Procedure; (2) the city also must release the marked information that is subject to section 552.022(a)(17) of the Government Code; (3) except for the basic information that must be released under section 552.108(c), the city may withhold the remaining information under section 552.108(a)(1); and (4) the social security number of the arrested person must be withheld under section 552.147. As we are able to make these determinations, we do not address your other arguments against disclosure.

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

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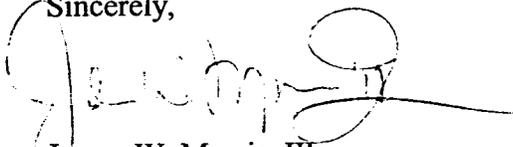
<sup>1</sup>We also note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 247958

Enc: Submitted documents

c: Mr. Brandon Formby  
Dallas Morning News  
131 West Main Street  
Lewisville, Texas 75067  
(w/o enclosures)