



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2006

Mr. Les Moore
Police Legal Advisor
Irving Police Department
305 North O'Connor Road
Irving, Texas 75061

OR2006-03186

Dear Mr. Moore:

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# 247947.

The Irving Police Department (the "department") received a request for 17 categories of information relating to a fatal traffic accident. You claim that the requested information is exempted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

We first note that the submitted documents include an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the department with two of the three specified items of information. Therefore, the department must release the accident report, which we have marked, under section 550.065(c)(4) of the Transportation Code.

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We next note that the submitted documents include an affidavit for an arrest warrant. Article 15.26 of the Code of Criminal Procedure provides that “[an] 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. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the department must also release the arrest warrant affidavit that we have marked under article 15.26 of the Code of Criminal Procedure if it was presented to a magistrate in support of the issuance of an arrest warrant.

The submitted documents also include 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). Because the search warrant affidavit that we have marked relates to a search warrant that has been executed, it must be released under article 18.01 of the Code of Criminal Procedure.

We also note that some of the submitted 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 sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body’s interests and may be waived. *See* Gov’t Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. — Dallas 1999, no pet.) (Gov’t Code § 552.103 may be waived); 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). As such, sections 552.103 and 552.108 are not other law that makes information expressly confidential for the purposes of section 552.022. Therefore, the department may not withhold any of the information that is subject to section 552.022 under section 552.103 or section 552.108. As none of the information in question is expressly confidential under other law, the marked information that is subject to section 552.022(a)(17) of the Government Code must also be released.

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 state that the rest of the submitted information relates to a pending criminal case. 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.

In summary: (1) the marked accident report must be released under section 550.065(c)(4) of the Transportation Code; (2) the marked arrest warrant affidavit must be released under article 15.26 of the Code of Criminal Procedure if it was presented to a magistrate in support of the issuance of an arrest warrant; (3) the marked search warrant affidavit must be released under article 18.01 of the Code of Criminal Procedure; (4) the department must also release the marked information that is subject to section 552.022(a)(17) of the Government Code; and (5) except for the basic information that must be released under section 552.108(c), the department may withhold the rest of the submitted information under section 552.108(a)(1).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

²As we are able to make these determinations, we do not address your claim under section 552.103 of the Government Code. We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

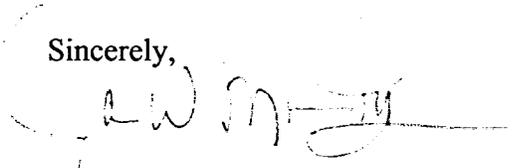
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/eb

Ref: ID# 247947

Enc: Submitted documents

c: Mr. Chad W. Dunn
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(w/o enclosures)