ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2006

Ms. Alicia Richardson
City Secretary
City of Highland Village
1000 Highland Village Road
Highland Village, Texas 75077

OR2006-04788

Dear Ms. Richardson:

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# 248502.

The Highland Village Police Department (the "department") received a request for a copy of the probable cause affidavit pertaining to a specific arrest. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your arguments and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that persons may submit comments stating why information should or should not be released).

Article 15.26 of the Code of Criminal Procedure states that "[t]he 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." Crim. Proc. Code art. 15.26. Therefore, the probable cause affidavit is made public under article 15.26. Exceptions to disclosure under the Act generally do not apply to information that is made public by other statutes, such as

article 15.26 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, we do not reach your arguments against disclosure, and the submitted information must be released to the requestor.

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 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,

Margaret Cecere
Assistant Attorney General
Open Records Division

MC/eb

Ref: ID# 248502

Enc. Submitted documents

c: Ms. Kimberly McCary
P.O. Box 493
Lewisville, Texas 75067
(w/o enclosures)