



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR2006-05463

Dear Ms. Joe:

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# 253562.

The Travis County Sheriff's Office (the "sheriff") received a request for information relating to the arrest of a named individual. You have submitted information that you claim is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.¹ As you have not submitted any information that is responsive to the request for the complaint/grievance procedure employed at Travis County Jail Central Booking, we assume that the sheriff has released any information encompassed by that aspect of this request that was in existence when the sheriff received the request.² If not, then any such information

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff 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).

²We note that the Act does not require the sheriff to release information that did not exist when he received this request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

must be released immediately.³ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We first note that the submitted information includes 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 (emphasis added). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. Therefore, if the affidavit that we have marked was presented to a magistrate in support of the issuance of an arrest warrant, then it is made public by article 15.26 of the Code of Criminal Procedure and must be released to the requestor. If the affidavit was not so presented, then it is not made public by article 15.26 and must be disposed of along with the rest of the submitted information.

We also note that one of the submitted documents 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 *id.* § 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 sheriff may not withhold any of the information that is subject to section 552.022 under section 552.108 and must release that information.

Next, we address your claim under section 552.108. This section 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 conclude 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).

³You inform us that the sheriff has released some of the requested information.

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 sheriff 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 sheriff may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.

We note that under section 552.147 of the Government Code, “[t]he social security number of a living person is excepted from” required public disclosure under the Act.⁴ The sheriff must withhold the social security number of the arrested person under section 552.147.

In summary: (1) the sheriff must release the marked arrest warrant affidavit 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; (2) the sheriff must release the marked information that is subject to section 552.022 of the Government Code; (3) except for the basic information that must be released under section 552.108(c), the sheriff may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code; and (4) the sheriff must withhold the arrested person’s social security number under section 552.147 of the Government Code.

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

⁴We 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.

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/vh2

Ref: ID# 253562

Enc: Submitted documents

c: Mr. Kenavon T. Carter
ACLU of Texas
P.O. Box 12905
Austin, Texas 78711
(w/o enclosures)