



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2006

Mr. Harold Willard
Police Legal Advisor
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2006-05536

Dear Mr. Willard:

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# 249987.

The City of Lubbock (the "city") received a request for information relating to a particular criminal case. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

First, we note that the submitted documents include an affidavit for 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. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). In this instance, it is not clear whether the submitted affidavit was presented to a magistrate in support of the issuance of an arrest warrant. Accordingly, we must rule in the alternative. If the affidavit that we have marked was in fact presented to a magistrate in support of the issuance of an arrest warrant, then it is made public and must be released under article 15.26 of the Code of Criminal Procedure. 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.

Next, we address your claim under section 552.108 of the Government Code. This section 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. You state that the submitted information relates to a concluded investigation that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is applicable in this instance.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The city may withhold the rest of the submitted information under section 552.108(a)(2) 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.¹ The city must withhold the arrested person’s social security number under section 552.147.

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

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

¹We 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.

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,



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

JWM/sdk

Ref: ID# 249987

Enc: Submitted documents

c: Ms. Cindy Bain
4906 63rd Street
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(w/o enclosures)