



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2006

Ms. April M. Virnig
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2005-05847

Dear Ms. Virnig:

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# 249553.

The Bridgeport Police Department (the "department"), which you represent, received a request for four categories of information related to a specified investigation of a named individual. You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, the requestor claims that the department failed to submit its request for a ruling within the ten business day time period required by section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). The requestor informs us that the department is open for business seven days a week, and thus the department missed its deadline for submitting a brief to our office. However, you inform us that although some department police officers

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

work on the weekends, these “officers are not the custodian of records” for the department. You explain that the office of the public information officer and administrative offices of the police department are closed on Saturdays and Sundays. The instant request for information was received by the department on February 28, 2006. Thus, the ten business day deadline was March 14, 2006. Upon review, we find that the department’s request for a decision was timely. *See* Gov’t Code § 552.301(b).

Next, we note that the submitted information includes an arrest warrant and arrest warrant affidavit. Article 15.26 of the Code of Criminal Procedure states “[t]he 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. 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 (1985). Thus, the department must release the arrest warrant and arrest warrant affidavit, which we have marked, in their entirety pursuant to article 15.26.

The submitted information also includes a search warrant affidavit. An affidavit to support a search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b). As the search warrant has been executed, the department must release the supporting affidavit in its entirety.

The department claims that the remaining submitted information is subject to section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected by other statutes such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Upon review, we find that the remaining information involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential pursuant to section 58.007(c) of the Family Code. The department must withhold the remaining information from disclosure under section 552.101 of the Government Code.

In summary, the department must release the arrest warrant and arrest warrant affidavit, which we have marked, in their entirety pursuant to article 15.26 of the Code of Criminal Procedure. Pursuant to article 18.01(b) of the Code of Criminal Procedure, the department must release the marked executed search warrant affidavit. The remaining information must be withheld under section 552.101 in conjunction with section 58.007 of the Family Code. As our ruling is dispositive, we do not address your remaining claims.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/eb

Ref: ID# 249553

Enc. Submitted documents

c: Ms. Judy Adkins
Mr. Samuel C. Bishop
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(w/o enclosures)