



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 20, 2006

Mr. John P. Danner  
Assistant City Attorney  
City of San Antonio  
Post Office Box 839966  
San Antonio, Texas 78283

OR2006-06473

Dear Mr. Danner:

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# 251886.

The City of San Antonio (the "city") received a request for the following information:

1. The dimensions of an athletic field as utilized for public recreational purposes;
2. The definition of an athletic field in a residential zone as it pertains to Sections 35-311 (c) of the City Code;
3. Verification of any and all contact (*notices, warnings and citations*) by the City of San Antonio Code Compliance Officers with [a named individual];
4. A [l]ist of all calls made to the City of San Antonio Code Compliance and San Antonio Police Department, pertaining to the property located at [a specified address];
5. Name and address of Complainant;
6. Name and address of Code Compliance Officer;
7. Verification of the zoning of the property located at [a specified address];

8. Verification that [a named individual] failed to comply with any notices received by the Code Compliance Department of the City of San Antonio.

You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note that the submitted information contains an arrest warrant and supporting 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. Article 15.04 provides that “[t]he affidavit made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense.” Crim. Proc. Code art. 15.04. Case law indicates that a complaint can support the issuance of an arrest warrant. *See Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref’d); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref’d) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). 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)*. Therefore, the submitted arrest warrant and supporting affidavit are public under article 15.26 of the Code of Criminal Procedure and must be released to the requestor.

The submitted information also contains documents filed with the court. Section 552.022 of the Government Code provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>Although you initially raised sections 552.113, 552.117, 552.136, and 552.137 of the Government Code as exceptions to disclosure, you did not submit to this office written comments stating the reasons why these sections would allow the information to be withheld. We therefore assume you no longer assert these exceptions. *See Gov’t Code §§ 552.301, .302*.

<sup>2</sup>We 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. 449 (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.

...

(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes information filed with a court expressly public unless it contains information that is expressly confidential under other law. Although you assert that these documents are excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code and the common-law informer's privilege, these exceptions are discretionary exceptions that protect a governmental body's interests and are therefore not "other law" for purposes of section 552.022(a)(17). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10-11 (2002) (attorney work-product privilege under section 552.111 may be waived), 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver), 549 at 6 (1990) (governmental body may waive common-law informer's privilege). Accordingly, the submitted court-filed documents are public under section 552.022(a)(17) of the Government Code and must be released to the requestor.

Next, we address your claim that the remaining submitted information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides as follows:

...

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex.*

*Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

You state, and the submitted documents reflect, that litigation was pending on the date the present request was received. You further state that the requested information is directly relevant to the pending litigation. Based on your claims, and our review, we agree that the city may withhold the remaining submitted information under section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the city must release the submitted arrest warrant and supporting affidavit pursuant to article 15.26 of the Code of Criminal Procedure, and the submitted court-filed documents pursuant to section 552.022 of the Government Code. The city may withhold the remaining submitted information that has not been obtained from or provided to the requestor under section 552.103 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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

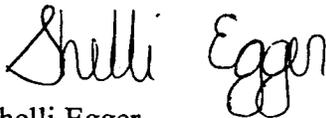
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Shelli Egger  
Assistant Attorney General  
Open Records Division

SE/sdk

Ref: ID# 251886

Enc. Submitted documents

c: Mr. Joe Piña  
Law Office of Joe Piña  
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San Antonio, Texas 78205  
(w/o enclosures)