



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2006

Ms. Diane L. Lincoln
Shenandoah Police Department
29955 I-45 North
Shenandoah, Texas 77381

OR2006-11735

Dear Ms. Lincoln:

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# 265094.

The Shenandoah Police Department (the "department") received a request for information relating to an auto accident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the submitted documents include a complaint. 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). Article 15.04 of the Code of Criminal Procedure 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." *Id.* art. 15.04 (emphasis added). 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). 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).

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In this instance, it is not clear whether the submitted complaint was presented to a magistrate in support of the issuance of an arrest warrant. Accordingly, we must rule in the alternative. Thus, if the complaint that we have marked was in fact presented to a magistrate in support of the issuance of an arrest warrant, then the complaint must be released, without redaction, under article 15.26 of the Code of Criminal Procedure. If the complaint 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 the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ).

Because the department did not request this decision within the ten-business-day period prescribed by section 552.301(b), the submitted information is presumed to be public under section 552.302.¹ This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos.* 630 at 3 (1994), 325 at 2 (1982). Although you claim exceptions to disclosure under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions that protect a governmental body's interests and may be waived. *See Gov't Code* § 552.007; *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 Gov't Code § 552.103) *Open Records Decision Nos.* 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The department's claims under sections 552.103 and 552.108 are not compelling reasons for non-disclosure under section 552.302. The department has waived sections 552.103 and 552.108 in failing to comply with section 552.301 and may not withhold any of the submitted information under section 552.103 or section 552.108. However, because the applicability of sections 552.101, 552.132, and 552.1325 can provide compelling reasons for non-disclosure, we will consider your assertion of those exceptions.

¹In this instance, the department's ten-business-day deadline under section 552.301(b) was September 12, 2006. The envelope in which the department submitted its request for this decision is meter-marked September 13, 2006. *See Gov't Code* § 552.308.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). You have not directed our attention to any law under which any of the submitted information is considered to be confidential for the purposes of section 552.101. Therefore, the department may not withhold any of the submitted information under section 552.101 of the Government Code.

Section 552.132 of the Government Code provides that a crime victim may elect whether to allow public access to certain information held by the Crime Victim’s Compensation Division of the Attorney General’s Office. *See* Gov’t Code § 552.132(b). In this instance, the information at issue is held by the department and not the Crime Victim’s Compensation Division of the Attorney General’s Office. Therefore, the department may not withhold any of the submitted information under section 552.132.

Section 552.1325 of the Government Code protects for the confidentiality of certain information held by a governmental body or filed with a court that is contained in a victim impact statement or that was submitted for purposes of preparing a victim impact statement. *See* Gov’t Code § 552.1325(b). As there is no indication that any of the information at issue is contained in a victim impact statement or was submitted for the purposes of preparing a victim impact statement, the department may not withhold any of the submitted information under section 552.1325.

We note, however, that section 552.130 of the Government Code is applicable to some of the submitted information.² Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1)-(2). We have marked Texas driver’s license and motor vehicle information that the department must withhold under section 552.130.

We also note that section 552.136 of the Government Code is applicable to some of the submitted information.³ Section 552.136 provides as follows:

²Unlike other exceptions to disclosure, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

³Section 552.136 also is a mandatory exception and may not be waived. Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136. We have marked account numbers that must be withheld under section 552.136.

Lastly, section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.⁴ Gov’t Code § 552.147(a). The social security numbers that we have marked must be withheld under section 552.147.

In summary: (1) the marked complaint must be released, without redaction, 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 marked Texas driver’s license and motor vehicle information must be withheld from disclosure under section 552.130 of the Government Code; (3) the marked account numbers must be withheld under section 552.136 of the Government Code; and (4) the marked social security numbers must be withheld under section 552.147 of the Government Code. The department must release the rest of the submitted information.

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

⁴We 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.

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).

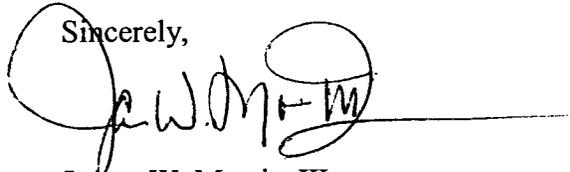
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a horizontal line extending to the right.

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

JWM/vh

Ref: ID# 265094

Enc: Submitted documents

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