



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2006

Ms. Beverly West Stephens
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2006-11938

Dear Ms. Stephens:

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# 265302.

The San Antonio Police Department (the "department") received a request for information relating to a fatal accident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 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).

In this instance, it is not clear whether the 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 it must be released without redaction 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 in requesting this decision. 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) provides that a governmental body must 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)*. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If the 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 any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, the department did not request a decision within the ten-business-day period prescribed by section 552.301(b). The department also failed to timely comply with section 552.301(e). Therefore, the submitted information is presumed to be public under section 552.302. 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)*. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code § 552.007; 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)*. You concede that the department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. You inform us, however, that the Bexar County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted information. We note that the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide

a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). Therefore, we will determine whether the department may withhold the submitted information on behalf of the district attorney under section 552.108. We also will consider your claims under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code, as the applicability of these exceptions can provide a compelling reason for non-disclosure.

We note that the submitted documents include an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the department with two of the three specified items of information. Therefore, the department must release the accident report, which we have marked, under section 550.065(c)(4) of the Transportation Code.

We also note that some of the submitted documents are 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). Section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, no information contained in the documents that are subject to section 552.022(a)(17) may be withheld under section 552.108. However, those documents, which we have marked, contain information that falls within the scope of section 552.130. As section 552.130 is a confidentiality provision for purposes of section 552.022(a)(17), we will address it.

Section 552.130 excepts from public disclosure information that relates to a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. We have marked Texas motor vehicle information that the department must withhold under section 552.130, to the extent that the information relates to a vehicle in which a living individual owns an interest. Because this exception protects privacy, which is a personal

right that lapses at death, information relating to a vehicle in which no living individual owns an interest may not be withheld under section 552.130.¹

Next, we address your claim under section 552.108. Section 552.108(a)(1) 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 . . . 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, and have provided a letter from the district attorney’s office stating, that the rest of the submitted information relates to a pending criminal prosecution. Based on your representation and the district attorney’s letter, we conclude that section 552.108(a)(1) is applicable to the remaining information. *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).

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

Lastly, 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.² Gov’t Code § 552.147(a). The department must withhold the social security number of the arrested person under section 552.147.

In summary: (1) the marked complaint must be released if it was presented to a magistrate in support of the issuance of an arrest warrant; (2) the marked accident report must be

¹*See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

²We 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.

released under section 550.065(c)(4) of the Transportation Code; (3) the marked documents that are subject to section 552.022(a)(17) of the Government Code must be released, except for any information that must be withheld under section 552.130 of the Government Code; (4) except for the basic information that must be released under section 552.108(c), the department may withhold the remaining information under section 552.108(a)(1) of the Government Code; and (5) the arrested person's social security number must be withheld under section 552.147 of the Government Code. As we are able to make these determinations, we do not address your other 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).

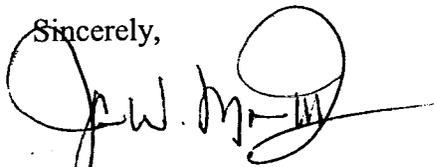
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large, prominent initial "J" and "M".

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

JWM/vh

Ref: ID# 265302

Enc: Submitted documents

c: Ms. Sylvia Almaguer
International Investigations & Security, Inc.
5011 Glen Ridge Apt. U13
San Antonio, Texas 78229
(w/o enclosures)