



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1997

Ms. Susan J. Barnett
Assistant District Attorney
Collin County
210 S. McDonald, Suite 324
McKinney, Texas 75069

Captain Kelley E. Stone
Operations Division
Office of the Sheriff
Collin County
4300 Community Blvd.
McKinney, Texas 75070

OR97-2108

Dear Ms. Barnett and Captain Stone:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 109055.

The Collin County District Attorney and Sheriff received requests for the same information, "copies of any search or arrest warrants executed on Robert Glen Blackstock, cause number 004-82113-97," as well as "copies of the original complaint and offense report." The Sheriff informs us that the Sheriff's office has released to the requestor the front page of three incident reports. You both assert that the requested information is excepted from required public disclosure based on sections 552.103, 552.108 and 552.111 of the Government Code. You both also raise concerns for the privacy of the victim involved in the referenced case.

Section 18.01(b) of the Code of Criminal Procedure states that "[t]he affidavit [supporting a search warrant] is public information if executed." The submitted documents indicate that the affidavit requested was executed. A governmental body may not invoke the act's discretionary exceptions such as sections 552.103, 552.108 and 552.111, if the

requested information is specifically made public by statute. *See e.g.*, Open Records Decision No. 161 (1977). Thus, the District Attorney¹ and the Sheriff must release the affidavit to the requestor.

The Seventy-Fifth Legislature amended Government Code section 552.108 to read in part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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;

(3) . . .

. . .

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or crime.

See Act of June 1, 1997, H.B. 951, § 1, 75th Leg., R. S. (to be codified at Gov't Code § 552.108). Both the District Attorney and the Sheriff explain that the requested documents are part of a pending misdemeanor case that was filed on May 22, 1997 and set for an announcement on August 5, 1997. Section 552.108 does not apply to court-filed documents, such as a search warrant and information. *See Star Telegram v. Walker*, 836 S.W.2d 54 (Tex. 1992). We, therefore, conclude that, with the exception of the subsection (c) basic information, the search warrant and the information, section 552.108(a) excepts the requested information from public disclosure. *See also 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) (finding right of public to "front-page offense report" information).

¹We do not believe that the fact that the affidavit is in a court's possession makes the District Attorney's copy of the affidavit a judicial record that would not be subject to the act. *See* Gov't Code § 552.003(1)(B) (defining governmental body as not including the judiciary).

We turn to the victim's privacy rights. Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

We agree that the documents contain information that is embarrassing to the victim. However, as the victim's identity, as well as certain details of the offense, are included in a public record, the affidavit supporting the search warrant, we believe the information is of legitimate concern to the public. *See Star Telegram v. Walker*, 836 S.W.2d 54 (Tex. 1992) (no privacy interest in information found in public court documents). Therefore, you may not withhold the information based on the common-law right to privacy.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/rho

Ref.: ID# 109055

Enclosures: Submitted documents

cc: Ms. Jacque Hilburn
The Courier-Gazette
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(w/o enclosures)

