



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1997

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-2392

Dear Mr. Pigott:

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# 110147.

The Texas Department of Public Safety (the "department") received a request for information relating to the search of a particular building and the wiretapping of particular telephone lines. You state that "the Department will be making the search warrant, the General Warranty Deed and Deed of Trust" available to the requestor. You contend that all other information in the case file is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You have submitted representative samples of the documents at issue to this office for review.¹

Initially, we note that the submitted documents include an arrest warrant that has been filed with a court. Documents filed with a court are generally considered public. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Thus, documents of this type must be released to the requestor.

The submitted documents also include a probable cause affidavit. Article 18.01(b) of the Code of Criminal Procedure provides:

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.

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed.* [Emphasis added.]

Information specifically made public by law outside the act may not be withheld pursuant to any of the act's exceptions to required public disclosure. See, e.g., Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, we conclude that the department must release the probable cause affidavit if it was executed.

We will now consider whether the remaining documents are excepted from disclosure pursuant to the exceptions you have claimed. Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

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

...

(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 a crime.

Gov't Code § 552.108. You state that the requested information relates to "the investigation of a case that could result in the criminal prosecution of one or more persons." You also note that there is an arrest warrant pending for one of these individuals. You have demonstrated that releasing the remaining documents would interfere with the detection, investigation or prosecution of crime. We conclude, therefore, that section 552.108(a)(1) is applicable to the documents.

We note, however, that information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. With the exception of front page offense report information, section 552.108(a)(1) authorizes you to withhold

the remaining information from disclosure.² Of course, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 110147

Enclosures: Submitted documents

cc: Ms. Micaela L. Martinez
2710 Emerald Lake Drive
Harlingen, Texas 78550
(w/o enclosures)

²As we are able to resolve this matter under section 552.108, we need not address you section 552.103 arguments.