



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 20, 1997

Mr. James M Kuboviak
County Attorney
County of Brazos
200 E. 26th, Suite 325
Bryan, Texas 77803

OR97-2538

Dear Mr. Kuboviak:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111108.

The Brazos County Attorney (the "county attorney") received a request for "the search warrant/affidavit and probable cause statement or equivalent, in the possession of the Brazos County Attorney's Office" regarding the search of a specific location on a specific date. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your argument that, as the requested information may be obtained from the Justice of the Peace, the county need not release the information in its possession to the requestor. A governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the county attorney holds records from which the requested information can be obtained, he or she must provide that information to the requestor unless it is otherwise excepted from disclosure. Open Records Decision No. 87 (1975); *see generally* Open Records Decision No. 231 (1979) at 3 (when governmental body obtains, for its own administrative purposes, information from another entity, that information becomes record of receiving governmental body, which has responsibility for responding to open records requests made to that body); *see also* Gov't Code § 552.353 (providing penalties for failure to permit access to public information).

We now turn to your claimed exceptions from disclosure. Section 552.108 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 [required public disclosure] if: (1) release of the information would interfere with the detection, investigation or prosecution of crime;

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution.

You state that “[t]he County Attorney is actively prosecuting the Defendant for committing the offense of possession of marijuana on October 5, 1995,” and you have submitted documents to this office showing that the criminal prosecution related to this request is pending.¹ You also argue that the requested information is “an internal record maintained by the prosecutor for his use in prosecuting the case.”

We have reviewed the submitted information. Your brief to this office is unclear as to whether the document identified as the “probable cause statement prepared by the arresting officer after the warrantless arrest of Willie Esther Craig” was made in support of an executed search warrant. We also note your representation that this document “is not in the records of Judge Hensarling,” although it is unclear to this office whether this document was ever filed with a court. If any of the requested documents have been filed with a court, they are a part of the public record and must be released. *Cf. Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). If, however, any of the documents have not been filed with a court, they are protected from disclosure by section 552.108(a)(1) of the Government Code. Similarly, if any of the probable cause affidavits were made to support a search warrant, those affidavits are public by statute if the warrant has been executed. *See Code Crim. Proc. art. 18.01(b)*. Therefore, the county attorney may not withhold the affidavits under section 552.108 of the Government Code if they supported an executed search warrant.

¹You submitted to this office, apparently for informational purposes, copies of the court’s docket and documents filed with the court. We assume that these specific documents, labeled as number 4, are not at issue. However, we note that public documents may not be withheld from disclosure. Open Records Decision Nos. 551 (1990) at 2-3, 221 (1979) at 1.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 111108

Enclosures: Submitted documents

cc: Mr. Stephen Gustitis
Attorney at Law
412 Tarrow
College Station, Texas 77840
(w/o enclosures)