



March 1, 2000

Mr. Sam Oatman
District Attorney
Thirty-Third Judicial District
P.O. Box 725
Llano, Texas 78643

OR2000-0794

Dear Mr. Oatman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134035.

The District Attorney for the Thirty-Third Judicial District received a request for information regarding a particular case. You submitted as responsive to the request a Search and Arrest Warrant and its supporting affidavit. You ask whether this and other information must be disclosed in response to the request. You raise sections 552.101 and 552.108 of the Government Code as possible exceptions to disclosure.

You ask whether the entire contents of a file responsive to the request may be withheld under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

. . . .

(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[.]

You advise that the case to which the file pertains was dismissed by the trial court. However, as we will explain below, you may not withhold under section 552.108(a)(2) the contents of the file which you have not submitted to this office.

Section 552.301(e)(1)(D) of the Government Code requires that a governmental body seeking an attorney general decision as to whether it may withhold information submit to this office copies of the requested information or representative samples thereof no later than the 15th business day after it received the request. Section 552.302 provides that if a governmental body fails to timely submit the materials required by section 552.301, the requested information must be released unless there is a compelling reason to withhold the information. A compelling reason for withholding information under section 552.302 would be that the information was confidential by law. *See, e.g.,* Open Records Decision No. 150 (1977). Section 552.108 does not provide a compelling reason under section 552.302 for withholding information.

Here, you have not, to date, provided this office a copy or a representative sample of the file you reference. Therefore, you may not withhold under section 552.108 the portions of the file you have not submitted. Rather, pursuant to section 552.302, such records must be released except for confidential information contained therein. *See* Gov't Code § 552.353 (criminal penalties for release of confidential information).

With respect to the information you did submit as responsive to the request, article 18.01(b) of the Code of Criminal Procedure makes public, "if executed," a sworn affidavit in support of a search warrant. If the search warrant you submitted was executed, then the affidavit must be released pursuant to article 18.01(b). We note too that section 552.022(a)(17) of the Government Code requires release, unless confidential by law, of "information that is also contained in a public court record." The search and arrest warrant, the affidavit, and any other information responsive to the request must be released pursuant to section 552.022(a)(17) if such information "is also contained in a public court record."¹ If the search warrant and/or the affidavit are not made public under the above-referenced provisions, however, we believe that you have established that they pertain to a matter which did not result in a conviction or deferred adjudication, such that they may generally be withheld under section 552.108(a)(2).

Please note, however, that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other applicable exception to disclosure, you must release these types of information in accordance with *Houston Chronicle Publishing Company 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).

¹You ask whether section 552.108 "takes precedent over section 552.022[a](1) - (17)." Subsection (a)(1) of section 552.022 specifically provides for the public release, unless it is confidential by law, of "a completed audit, report, or investigation made by or for a governmental body, *except as provided by section 552.108.*" (Emphasis added) None of the other provisions of section 552.022, providing for release of various information, add an equivalent proviso regarding section 552.108. Therefore, it is the position of this office that, except for that information described in subsection (a)(1), none of the information described in section 552.022 may be withheld under section 552.108.

Finally, we also understand you to ask whether information responsive to the request which gives personal address information is subject to common law privacy protection under section 552.101 of the Government Code. Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Having reviewed the information you submitted, we find no basis for withholding address information in the responsive records under common law privacy. Except as indicated above, information responsive to the request must be released.

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.

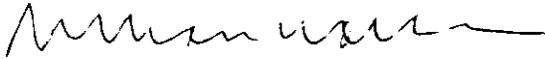
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "William Walker", with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 134035

Encl. Submitted documents

cc: Mr. Donald E. Jordan
Attorney at Law
P.O. Box 1017
Brevard, North Carolina 28712
(w/o enclosures)