OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 19, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2003-1106

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176741.

The Department of Public Safety ("DPS") received a request for the arrest warrant and probable cause affidavit in reference to a named individual. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that, if the arrest warrant and related supporting affidavit have been filed with a court, then they are considered public information. *See* Gov't Code § 552.022(a)(17) (providing for required public disclosure of information that also is a matter of public court record); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). However, you state that the arrest warrant has not been executed. We assume this means that the arrest warrant and the supporting affidavit have not been filed with a court and are not public information under section 552.022(a)(17).

We next address your raised exception to disclosure. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1),.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the requested information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the submitted arrest warrant and supporting affidavit would interfere with the detection, investigation, or prosecution of crime. *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). This information may be withheld from disclosure under section 552.108(a)(1).

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).

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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 176741

Enc: Submitted documents

c: Mr. David Lewis
Pilot Point Post-Signal
P.O. Box 249
Pilot Point, Texas 76258
(w/o enclosures)