OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 22, 2003

Mr. Jim B. Simpson
Assistant County Attorney
Johnson County
2 North Main Street
Cleburne, Texas 76031

OR2003-3456

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181483.

The Johnson County Sheriff's Department (the "sheriff") received a request for 13 categories of information relating to a fire at a specified address on March 22, 2002. You state that the sheriff has released some of the requested information. You claim that the remaining requested information is either not subject to disclosure under chapter 552 of the Government Code or excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.117, and 552.1175. We have considered your arguments and have reviewed the information you submitted.[1] We also have considered the comments that we received from the requestor.[2] *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

---

[1]This letter ruling assumes that the submitted representative sample of responsive information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

[2]The requestor contends, among other things, that the sheriff's request for this decision was untimely. We note, however that a governmental body has ten *business* days after the date of its receipt of a request for information in which to request a decision under section 552.301 of the Government Code. *See* Gov't Code § 552.301(b)). The sheriff's request for this decision was timely submitted under section 552.301(b).

Initially, we address your representation that some of the requested information was obtained pursuant to grand jury subpoenas. This office has concluded that a grand jury is not a governmental body that is subject to chapter 552 of Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Gov't Code § 552.003(1)(B) (definition of governmental body does not include judiciary); Open Records Decision No. 513 at 3 (1988) (information held by grand jury, which is extension of judiciary for purposes of chapter 552, is not itself subject to chapter 552). When an individual or an entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *See* Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is shown to be applicable. *Id.* Thus, to the extent that the sheriff has custody of the submitted information as agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under chapter 552 of the Government Code. *Id.* at 4.

Next, we note that the submitted information that is subject to chapter 552 includes an affidavit for a search warrant. The release of this affidavit is governed by article 18.01 of the Code of Criminal Procedure, which provides in part:

> (b) 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, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 18.01(b). Thus, when a search warrant has been executed, the supporting search warrant affidavit must be released under article 18.01(b). In this instance, the submitted affidavit relates to a search warrant that has been executed. Therefore, the search warrant affidavit that we have marked must be released in accordance with article 18.01(b) of the Code of Criminal Procedure. *See also* Open Records Decision No. 623 at 3 (1994) (exceptions to public disclosure under Gov't Code ch. 552 generally not applicable to information that another statute expressly makes public).

You claim that the rest of the submitted information that is subject to chapter 552 is excepted from required public disclosure under section 552.108. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the

requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform us that the submitted information relates to a pending criminal investigation and prosecution. You state that the release of this information would interfere with the case, which involves charges of arson, criminal conspiracy, and insurance fraud. Based on your representations and our review of the submitted information, we find that section 552.108(a)(1) is applicable in this instance. *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).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The sheriff must release basic information, including a detailed description of each offense involved, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff may withhold the rest of the submitted information that is subject to chapter 552 of the Government Code under section 552.108(a)(1).

In summary, information held by the sheriff as agent of the grand jury is in the grand jury's constructive possession and is not subject to disclosure under chapter 552 of the Government Code. The sheriff must release the search warrant affidavit under article 18.01(b) of the Code of Criminal Procedure. The sheriff may withhold the remaining information that is subject to chapter 552 under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c). As we are able to make these determinations, we need not address your other arguments against disclosure.[3]

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

---

[3]We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

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).

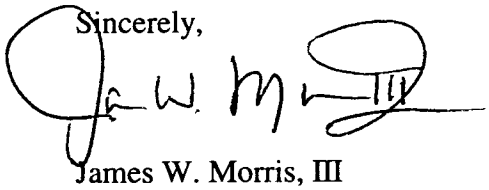
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 181483

Enc: Submitted documents

c: Mr. Thomas A. Herald
Herald, Moore & Willett, P.L.L.C.
1901 Central Drive, Suite 610
Bedford, Texas 76021
(w/o enclosures)