



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2003

Mr. U.H. Specht
Legal Advisor
City of Carrollton
2025 East Jackson Road
Carrollton, Texas 75006-1739

OR2003-8078

Dear Mr. Specht:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190907.

The City of Carrollton (the "city") received a request for three specified offense reports pertaining to a specified arrest. You claim that the requested 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.

Initially, we note that the submitted information includes search warrant affidavits and arrest warrants and supporting affidavits. An affidavit to support a search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b); *see also* Open Records Decision No. 525 (1989). Thus, if the corresponding search warrants have been executed, the city must release the submitted search warrant affidavits, which we have marked, to the requestor.

Additionally, the 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately after the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, Tex. Sess. Laws Serv. 1631 (to be codified at Crim. Proc. Code art. 15.26). This provision makes the submitted arrest warrants and supporting affidavits expressly public. The exceptions found in the Public Information Act (the "Act") do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the city must also release the arrest warrants and supporting affidavits, which we have marked, to the requestor.

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 how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information pertains to cases that have been filed with the Dallas County District Attorney's Office and are currently pending prosecution. Based on your representations and our review, we conclude that the release of the submitted information 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).

However, 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*. *See* 531 S.W.2d at 186-87. Basic information under section 552.108(c) includes the identity of the complainant and a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information made public by *Houston Chronicle*). We note, however, that two of the submitted offense reports relate to an alleged sexual assault. The identity of a sexual assault victim is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.¹ *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision Nos. 393 (1983), 339 (1982). Accordingly, we have marked the basic information that the city must withhold from the submitted offense reports pursuant to section 552.101 and common-law privacy. The city must release all other basic offense and arrest information. Although section 552.108(a)(1) authorizes the department to withhold the remaining information from disclosure, it may choose to release all or part of it that is not otherwise confidential by law. *See* Gov't Code § 552.007.

¹Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses common-law privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d (Tex. 1976).

In summary, if the corresponding search warrants have been executed, the city must release the submitted search warrant affidavits, which we have marked. The city must also release the arrest warrants and supporting affidavits, which we have marked. While the city must withhold the basic information we have marked under common-law privacy, all other basic information from the submitted offense reports must be released. The city may withhold the remaining information 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 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,

A handwritten signature in black ink, appearing to read "Sarah Swanson", written in a cursive style.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 190907

Enc. Submitted documents

c: Terrence L. Ridgely
14200 Midway Road, Suite 118
Dallas, Texas 75244
(w/o enclosures)