



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2004

Mr. Ron G. MacFarlane, Jr.
Sifford, Anderson, Vice and MacFarlane, L.L.P.
2001 Bryan Street, Suite 2050
Dallas, Texas 75201

OR2004-5655

Dear Mr. MacFarlane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204864.

The Cedar Hill Police Department (the "department"), which you represent, received two requests from two requestors for the police reports, search warrants, and arrest warrants regarding a shooting at a specified address. You assert that there were no arrest warrants as of the date of the request.¹ 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.

Initially, we note you have not submitted the requested police reports, nor have you indicated that you seek to withhold any such reports; therefore, if such reports existed on the date of the department's receipt of this request for information, we assume you have already released them to the requestors. You must release any such reports to the requestors at this time if you have not done so already. See Gov't Code §§ 552.301(a), 552.302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

¹We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opps. Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Next, we note the submitted information consists of a search warrant that has been executed and filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Therefore, the search warrant is made public under section 552.022(a)(17). You contend that section 552.108 of the Government Code excepts the search warrant from release. Section 552.108 of the Government Code is a discretionary exception, and is not "other law" for purposes of section 552.022(a)(17); therefore, the search warrant may not be withheld under section 552.108. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). The search warrant must be released to the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 204864

Enc. Submitted documents

c: Mr. Gary W. Daniels
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(w/o enclosures)