



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2004

Mr. John Feldt
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2004-7660

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209133.

The Denton County Fire Marshal's Office (the "fire marshal") received a request for information relating to complaints against property owned by the requestor in Denton County. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the submitted information includes complaints. 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 when 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.

Crim. Proc. Code art. 15.26 (emphasis added). Article 15.04 of the Code of Criminal Procedure provides that "[t]he *affidavit* made before the magistrate or district or county attorney is called a 'complaint' if it charges the commission of an offense" (emphasis added).

Case law indicates that a complaint can support the issuance of an arrest warrant. *See Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref'd); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref'd) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). As a general rule, the exceptions to disclosure found in the Public Information Act (the "Act"), chapter 552 of the Government Code, do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

Although the submitted complaints appear to have been made before a magistrate, we are unable to determine whether they were presented to the magistrate in support of the issuance of an arrest warrant. As we are unable to make this determination, we must rule in the alternative. To the extent that the complaints that we have marked were in fact "presented to the magistrate in support of the issuance of [an arrest] warrant," they are made public by and must be released under article 15.26 of the Code of Criminal Procedure. To the extent that the marked complaints were not so presented, they are not made public by article 15.26 and must be disposed of along with the rest of the submitted information.

We also note that some of the submitted complaints have been filed with a court and are therefore subject to 552.022 of the Government Code. Section 552.022(a) provides in part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect the interests of the governmental body and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 subject to waiver), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, these exceptions are not other law that makes information confidential for the purposes of section 552.022. Therefore, the fire marshal may not withhold any information contained in the complaints that have been filed with a court under sections 552.103 or 552.108. Although you also raise section 552.101, you have not demonstrated, and it does not otherwise appear to this office, that this exception is applicable to any of the information contained in the court-filed

complaints.¹ As the fire marshal claims no other exception to the disclosure of these complaints, they must be released to the requestor.² We have marked the complaints that the fire marshal must release under section 552.022(a)(17).

Next, we address the fire marshal's claim under section 552.108. This section excepts from public 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[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 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 fire marshal's deputies are licensed Texas peace officers and that the fire marshal's office investigates violations of criminal laws. *Cf.* Open Records Decision No. 127 (1976) (Arson Investigation Division of Dallas Fire Department deemed to be law enforcement agency for purposes of statutory predecessor to Gov't Code § 552.108). You also state that the submitted information was prepared by a peace officer. You assert that the release of the submitted information would interfere with pending criminal prosecutions of the cases to which the information pertains. Based on your representations, 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).

We note that 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 fire marshal must release basic information, including detailed descriptions of each offense to which the submitted information pertains, even if this information does not literally appear on the front

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101; *see also* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy).

²We note that the court-filed complaints contain the requestor's Texas driver's license number, which the fire marshal would be required to withhold from the public under section 552.130. This exception protects privacy interests, however, and the requestor has a right of access to her own Texas driver's license information under section 552.023. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, in this instance, the fire marshal may not withhold the Texas driver's license information that appears in the court-filed complaints under section 552.130. Should the fire marshal receive another request from a person who would not have a right of access to any of the complaint information, the fire marshal should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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*). With the exception of the information that is subject to article 15.26 of the Code of Criminal Procedure or section 552.022 of the Government Code, the fire marshal may withhold the rest of the submitted information under section 552.108(a)(1).

In summary: (1) to the extent that the marked complaints were presented to the magistrate in support of the issuance of an arrest warrant, they must be released under article 15.26 of the Code of Criminal Procedure; (2) the complaints that have been filed with a court must be released under section 552.022(a)(17) of the Government Code; and (3) except for the basic information that must be released under section 552.108(c), the fire marshal may withhold the rest of the submitted information under section 552.108(a)(1). As we are able to make this determination, we need not address sections 552.101 or 552.103.³

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 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).

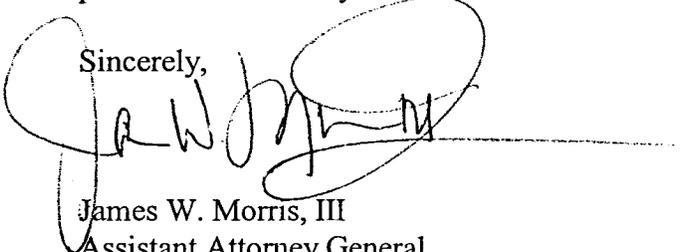
³We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

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# 209133

Enc: Submitted documents

c: Ms. Della Young
1153 Highline Lane
Little Elm, Texas 75068
(w/o enclosures)