



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2004

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
740 E Campbell Road, Suite 800
Richardson, Texas 75081

OR2004-8451

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210418.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to two specified reports, as well as any other reports that have been "filed against" a named individual. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that portions of the submitted information that we have marked are not responsive to the request for information. Accordingly, we conclude that the town need not provide the requestor with this particular marked information in response to this ruling.¹

Next, we note that portions of the remaining submitted information, which we have marked, constitute an arrest warrant and supporting affidavit. The 78th Legislature amended article 15.26 of the Code of Criminal Procedure to provide:

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

¹ Because we find that this particular marked information is not responsive to the request for information, we need not address your arguments with regard to this information.

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. Thus, article 15.26 of the Code of Criminal Procedure makes the marked arrest warrant and supporting affidavit public. As a general rule, the exceptions to disclosure found in 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). Accordingly, we conclude that the marked arrest warrant and supporting affidavit must be released to the requestor.

In addition, we note that portions of the remaining submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides 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). Portions of the remaining submitted information, which we have marked, are encompassed by subsection 552.022(a)(17) of the Government Code. This particular information must be released to the requestor, unless it is expressly confidential under other law. Although you claim that this particular marked information is excepted from disclosure under section 552.108 of the Government Code, we note that this exception to disclosure is a discretionary exception to disclosure under the Public Information Act (the "Act") that does not constitute "other law" for purposes of section 552.022.² Accordingly, we conclude that the town may not withhold any portion of this particular marked information under section 552.108 of the Government Code. Consequently, the town must release this marked section 552.022(a)(17) information to the requestor.

² Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or which implicates the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" for purposes of section 552.022 of the Government Code.

We further note that section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See U. S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor partly seeks copies of unspecified information in which a specified individual is identified. Thus, the request requires the town to compile information relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes investigations where the named individual was a criminal suspect, arrestee, or defendant. Accordingly, we conclude that to the extent that the town maintains responsive information other than that which was specified by the requestor that reveals that the specified individual was a criminal suspect, arrestee, or defendant, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You state that these portions of the remaining submitted information pertain to closed criminal investigations that did not result in conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) applies to these portions of the remaining submitted information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, to include detailed description of offense). Accordingly, we conclude that with the exception of basic information that must be released to the requestor, the town may withhold the information that we have marked pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the town maintains the discretion to release all or part of this particular marked information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, to the extent that the town maintains responsive information other than that which was specified by the requestor that reveals that the specified individual was a criminal suspect, arrestee, or defendant, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. With the exception of basic information that must be released to the requestor, the town may withhold the information that we have marked pursuant to section 552.108(a)(2) of the Government Code. The town must release to the requestor the remaining submitted information that is responsive to the request.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 210418

Enc. Marked documents

c: Ms. Laura Lee Stebbins
c/o Ms. Meredith Ladd
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(w/o enclosures)