



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2004

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2004-9375

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212217.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified arrest. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.107 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information contains arrest warrants and supporting affidavits. 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 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 arrest warrants and supporting affidavits that we have marked 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 warrants and supporting affidavits must be released to the requestor.

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) provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from disclosure]... if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You indicate that the investigation associated with the submitted information concluded in a dismissal of the charges against the requestor. Thus, based on your representations and our review of the remaining submitted information, we agree that section 552.108(a)(2) is applicable to this information.

We note, however, that basic information, which is normally found on the front page of an offense report, is generally considered public and not excepted from disclosure under section 552.108(c). *See* Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chron. 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); *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*, to include detailed description of offense). Accordingly, we conclude that, with the exception of basic information that must be released to the requestor, the department may withhold the remaining submitted information pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this particular information that is not otherwise confidential by law.¹ *See* Gov't Code § 552.007.

¹ Because we base our ruling on article 15.26 of the Code of Criminal Procedure and section 552.108(a)(2) of the Government Code, we need not address your remaining arguments.

In summary, the department must release the arrest warrant and supporting affidavits that we have marked pursuant to article 15.26 of the Code of Criminal Procedure. With the exception of the basic information that must also be released to the requestor, the department may withhold the remaining submitted information pursuant to section 552.108(a)(2) of the Government Code.

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/sdk

Ref: ID# 212217

Enc. Marked documents

c: Ms. Christine Helget
4226 Cedar Creek Drive
Garland, Texas 75043
(w/o enclosures)