



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2005

Mr. Ronald J. Neiman  
City Attorney  
City of Lewisville  
P.O. Box 299002  
Lewisville, Texas 75029-9002

OR2005-01240

Dear Mr. Neiman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 221493.

The Lewisville Police Department (the "department") received a request for "incident reports, arrest reports, prosecution reports, [and] probable cause affidavits" pertaining to a specified incident. You state that some information has been released to the requestor. You claim, however, that the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

First, we note that the submitted documents include a search warrant affidavit. A Search warrant affidavits are made public by statute if the search warrants have been executed. *See* Crim. Proc. Code art. 18.01(b). Therefore, the department must release the submitted search warrant affidavit.

The submitted information also includes an arrest warrant and a complaint affidavit. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." 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." Crim. Proc. Code art. 15.04. 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) (complaint in support of arrest warrant need not contain same particularity required of indictment). The department must release the submitted arrest

warrant. Further, to the extent the submitted complaint affidavit was presented to the magistrate in support of the issuance of the arrest warrant, it is public under article 15.26 of the Code of Criminal Procedure and must be released.

We next address your claim under section 552.108 with respect to the remaining submitted information. Section 552.108(a) of the Government Code 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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal case. Based on your representations and our review, we determine that the release of the remaining 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).

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the remaining information from disclosure pursuant to section 552.108(a)(1).

In summary, the department must release the submitted search warrant affidavit and arrest warrant pursuant to articles 18.01 and 15.26 of the Code of Criminal Procedure. To the extent the submitted complaint affidavit was presented to the magistrate in support of the issuance of the arrest warrant, it must be released pursuant to article 15.26. With the exception of basic information, the remaining submitted information may be withheld under section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/jev

Ref: ID# 221493

Enc: Submitted documents

c: Mr. Robert N. Udashen, P.C.  
Sorrels & Udashen  
2301 Cedar Springs Road, Suite 400  
Dallas, Texas 75201  
(w/o enclosures)