



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2005

Mr. David L. Hay
Dallas County Community College District
R. L. Thornton, Jr. Building
701 Elm Street
Dallas, TX 75202-3299

OR2005-01755

Dear Mr. Hay:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219573.

The Dallas County Community College District (the "district") received a request for a specific police report prepared by the Mountain View College Police Department (the "department"). You state that you will be releasing some of the information to the requestor, but you claim that the remaining information is excepted from disclosure under sections 552.108, 552.130, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We first note that the submitted information includes an affidavit for an arrest warrant, and the submitted information indicates that the arrest warrant was executed. The 78th Legislature 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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, an arrest warrant and supporting affidavit are made public under article 15.26 of the Code of Criminal Procedure. As a general rule, the exceptions to disclosure found in the Act 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 arrest warrant affidavit must be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure.

We will now consider your arguments for the remaining information at issue. Section 552.108(a)(1) 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 . . . 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 section 552.108 is applicable to that information. *See id.* § 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 state that the information at issue pertains to a pending criminal investigation being conducted by the district's police department (the "department"). Thus, we agree that the information you have highlighted in Exhibits C-1, D, and E, and Exhibits G and GG in their entirety, may be withheld from the requestor under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution." Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment).

You inform us that the requested information consists of criminal history checks made via TLETS. You explain that the TLETS logs are created and maintained by the department for purposes of monitoring use of the system and assuring that unauthorized individuals do not have access to confidential information. You assert that release of TLETS logs "could easily give a criminal sufficient warning to evade detection and/or prosecution." You state that "a records check might be run well before the individual has ever been contacted by police," and contend that "an individual who can find out whether any law enforcement agency has run checks on him/her...can obviously gain valuable knowledge in terms of concealing his/her activities from law enforcement scrutiny." Thus, you assert that release of the requested information would interfere with law enforcement activities. Based on your arguments and the information you provided, we agree that release of the information in Exhibits H, H-1, and H-2 would interfere with law enforcement. We therefore conclude that the information in Exhibits H, H-1, and H-2 may be withheld in its entirety under section 552.108(b)(1) of the Government Code.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, the type of information considered to be basic front page offense and arrest report information generally must be released, even if this information is not actually located on the front page of the offense report. Basic front page offense and arrest report information includes the identity and description of the complainant. *See* Open Records Decision No. 127 at 4 (1976) (summarizing types of information made public by *Houston Chronicle*). In this instance, however, you assert that the identity of the complainant is protected under section 552.135 of the Government Code.

Section 552.135 provides, in relevant part:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a)-(b). You claim that section 552.135 applies to the district as a result of section 130.084 of the Education Code. By its terms, section 130.084 affects only the authority of junior college trustees to direct a junior college. *See San Antonio Union Junior College Dist. v. Daniel*, 206 S.W.2d 995 (Tex. 1947). Thus, this office has applied section 130.084 and its predecessor to confer various school district powers on junior college trustees. *See, e.g.,* Attorney General Opinions DM-178 (1992) (power to borrow money

secured by delinquent maintenance tax revenues under section 20.45 of the Education Code), M-878 (1971) (power to issue time warrants to repair, renovate, and equip school buildings under section 20.43 of the Education Code), M-700 (1970) (power to exercise eminent domain under section 23.31 of the Education Code). However, this office has found that section 21.355 of the Education Code, which provides for the confidentiality of evaluations of school district teachers and administrators, does not bear on the direction of a junior college by junior college trustees, or confer power on those trustees. Likewise, we find that section 552.135, which provides for the confidentiality of the identities of school district informers, does not bear on the direction of a junior college by junior college trustees, and does not in any way confer power on those trustees. Consequently, the district may not withhold any portion of the submitted information pursuant to section 552.135 of the Government Code.

We next note that the submitted information contains social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the submitted documents are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. However, because section 552.023 of the Government Code provides the requestor a special right of access to his client's social security number, the district must release to the requestor his client's social security number. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential under privacy principles).

We finally note that Exhibit I contains a driver's license number. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. You must withhold the highlighted Texas driver's license number in Exhibit I under section 552.130.

In summary, the arrest warrant affidavit must be released to the requestor under article 15.26 of the Code of Criminal Procedure. You may withhold the information you have highlighted in Exhibits C-1, D, and E, and Exhibits G and GG in their entirety under section 552.108(a)(1) of the Government Code. You may withhold Exhibits H, H-1, and H-2 in their entirety under section 552.108(b)(1) of the Government Code. The submitted social security numbers may be confidential under federal law, but the requestor has a special right of access to his client's social security number under section 552.023. You must withhold the highlighted driver's license number in Exhibit I under section 552.130 of the Government Code. The remaining information must be released.

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); *Texas Department of Public 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 the General Services 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. 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 "Elizabeth A. Stephens". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth A. Stephens
Assistant Attorney General
Open Records Division

EAS/krl

Ref: ID#219573

Enc. Submitted documents

c: Noel Portnoy
4026 Lemmon Avenue
Dallas, TX 75219-3736
(w/o enclosures)