



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 17, 2005

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-257

OR2005-02291

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 220418.

The Waco Police Department (the "department") received a request for information relating to a specified incident. You inform us that the department has released some of the requested information. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes an arrest warrant and supporting affidavit for the arrest warrant. Article 15.26 of the Code of Criminal Procedure provides:

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, an arrest warrant and affidavit for an arrest warrant that has been presented to a magistrate are made public and must be released under article 15.26

of the Code of Criminal Procedure. As a general rule, the exceptions to disclosure found in the Public Information Act (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). Therefore, because the affidavit that we have marked was presented to a magistrate in support of the issuance of the arrest warrant, the arrest warrant and the affidavit must be released in accordance with article 15.26 of the Code of Criminal Procedure.

The submitted information also includes accident report forms that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code §§ 550.062, .064 (law enforcement officer's written report of a motor vehicle accident, Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4)). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor did not provide the department with two of the three requisite pieces of information. Therefore, the department must withhold the submitted ST-3 accident reports in their entirety in accordance with section 550.065(c)(4) of the Transportation Code.

Next, section 552.108 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 assert that the release of the remaining information that the department seeks to withhold under section 552.108 would interfere with a pending criminal investigation. Based on your representation, we agree 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).

However, 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 department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976)

(summarizing types of information deemed public by *Houston Chronicle*). The rest of the information that the department seeks to withhold under section 552.108 is excepted from disclosure under section 552.108(a)(1).

Finally, the remaining information includes Texas motor vehicle information which is excepted from disclosure under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements 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(a)(1)-(2). Therefore, the department must withhold from disclosure the information you have marked, as well as the additional information we have marked, under section 552.130.

In summary, (1) the department must withhold the ST-3 accident reports pursuant to section 550.065(c)(4) of the Transportation Code; (2) except for the basic information that must be released under section 552.108(c), the department may withhold the information it has marked under section 552.108(a)(1); and (3) the department must withhold the marked information under section 552.130. The remaining submitted information must be released to the requestor.<sup>1</sup>

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

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<sup>1</sup>We note that the information being released contains information relating to the requestor that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, the requestor has a special right of access to this information. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates solely on grounds that information is considered confidential by privacy principles). If the department receives another request for this information from a person who would not have a special right of access to the requestor's information, the department should resubmit this same information and request another decision. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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).

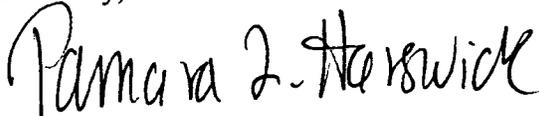
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 220418

Enc. Submitted documents

c: Mr. David Villafana  
900 North Peggy  
Waco, Texas 76706  
(w/o enclosures)