



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2005

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2005-08436

Dear Ms. DeLuca:

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# 232208.

The College Station Police Department (the "department") received a request for information relating to the requestor from August 2000 to the date of the request, including complaint records, witness statements, call logs, victim impact statements, correspondence, electronic communications, offense reports, and statements given by and audio recordings of the requestor. You state that Texas driver's license numbers will be withheld under the previous determinations granted to the department and the City of College Station in Open Records Letter Nos. 2001-5847 (2001) and 2002-2022 (2002). You also inform us that the department will release some of the requested information. You claim that the rest of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

We initially note that the submitted information includes an arrest warrant and a probable cause affidavit. Article 15.26 of the Code of Criminal Procedure provides that "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

warrant, is public information[.]” Crim. Proc. Code art. 15.26. 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). The arrest warrant that we have marked was presented to a magistrate and must be released under article 15.26 of the Code of Criminal Procedure. Although the affidavit that we have marked may also be subject to article 15.26, we are unable to determine whether it was presented to a magistrate in support of the issuance of the arrest warrant. Accordingly, we must rule in the alternative. If the affidavit was presented to a magistrate in support of the issuance of the arrest warrant, then it must also be released under article 15.26 of the Code of Criminal Procedure. If the affidavit was not so presented, then it is not subject to article 15.26 and must be disposed of along with the rest of the submitted information.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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 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). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You state that the rest of the submitted information relates to investigations that did not result in a conviction or a deferred adjudication. Based on your representation and our review of the information in question, we agree that section 552.108(a)(2) is applicable in this instance.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information under section 552.108(c), including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. Except for the information that must be released under section 552.108(c), the department may withhold the rest of the submitted information under section 552.108(a)(2).²

We note that some of the information relating to service number 05-003973 that is subject to section 552.108(c) would ordinarily be protected by common law privacy under section

²As we are able to make this determination, we do not address your other claim under section 552.108.

552.101 of the Government Code.³ In this instance, however, the information in question relates to the requestor, who has a special right of access to his own private information. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the department must release basic information with respect to service number 05-003973 in accordance with section 552.108(c)

The department seeks to withhold other information that is subject to section 552.108(c) under section 552.101 on the basis of certain "special circumstances." In Open Records Decision No. 169 (1977), this office concluded that under "special circumstances," privacy under section 552.101 will protect information that ordinarily would be subject to public disclosure. *Id.* at 6-7. Such "special circumstances" encompass a very narrow set of situations. *Id.* at 6. They do not include a desire for privacy or "a generalized and speculative fear of harassment or retribution." *Id.* On the other hand, they do include situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." *Id.*

We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.* at 7. Having considered your arguments, we conclude that you have demonstrated the existence of special circumstances that justify the withholding of the rest of the information that relates to service numbers 02-007313 and 03-009303. Thus, the department must withhold that information under section 552.101 of the Government Code.

In summary: (1) the arrest warrant must be released under article 15.26 of the Code of Criminal Procedure; (2) the probable cause affidavit must also be released under article 15.26 if it was presented to a magistrate in support of the issuance of the arrest warrant; (3) except for basic information under section 552.108(c), the department may withhold the rest of the submitted information under section 552.108(a)(2); and (4) the department must withhold the remaining information that relates to service numbers 02-007313 and 03-009303 on the basis of special circumstances under section 552.101 of the Government Code. The rest of the submitted 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

³Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

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).

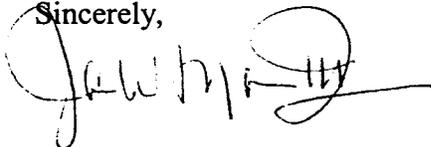
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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 Office of the Attorney General 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 "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 232208

Enc: Submitted documents

c: Mr. Alexander Krausz
1600 Southwest Parkway #703
College Station, Texas 77840
(w/o enclosures)