



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2005

Mr. Ronald J. Bounds  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2005-10306

Dear Mr. Bounds:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 236312.

The Frio County Sheriff (the "sheriff"), which you represent, received a request for three categories of information, including information pertaining to two named individuals during specified time periods and information concerning a specified incident. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the request for information encompasses bail bond forms submitted by a named company during a specified time period. You have not submitted any information responsive to this part of the request for our review. *See* Gov't Code § 552.301(e)(1)(D). Therefore, to the extent responsive information exists, we assume that you have released it to the requestor. However, if the information exists and the sheriff has not released such information to the requestor, the sheriff must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, some of the submitted documents, which we have marked, are not responsive to the instant request for information, as they were created outside of the requested time periods.

This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

We note that the remaining information includes arrest warrants and complaints. 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.” Crim. Proc. Code art. 15.26. 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.” *Id.* art. 15.04 (emphasis added). 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. refused); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. refused) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). 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). Thus, a complaint that was submitted to a magistrate in support of the issuance of an arrest warrant is made public by and must be released under article 15.26 of the Code of Criminal Procedure. In this instance, it is not clear whether the submitted complaints were presented to a magistrate in support of the issuance of an arrest warrant. Accordingly, we must rule in the alternative. Thus, to the extent that the complaints that we have marked were in fact “presented to the magistrate in support of the issuance of the warrant,” they are made public by article 15.26 of the Code of Criminal Procedure and must be released. To the extent that the complaints were not so presented, they are not made public by article 15.26 and must be disposed of along with the rest of the submitted information. You must release the arrest warrants to the requestor pursuant to article 15.26 of the Code of Criminal Procedure.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 incorporates the common law right to privacy. 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). When a governmental entity compiles criminal history information with regard to a particular individual as a possible criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates the individual’s right to privacy in a manner that the same information in an uncompiled state does not. *See U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

In part, the present request is for all records relating to two named individuals. To that extent, the request is for unspecified information and implicates the named individuals' right to privacy. Therefore, to the extent that the sheriff maintains any information that relates to the named individuals as criminal suspects, arrestees, or defendants, other than records of the specific incident listed by the requestor, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

Furthermore, the Texas Supreme Court, in *Industrial Foundation*, also included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs as types of information considered intimate and embarrassing. 540 S.W.2d at 683. We have reviewed the submitted records and marked the information that the sheriff must withhold under section 552.101 in conjunction with common law privacy.

We note that the remaining information contains fingerprint information. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. See Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). The sheriff does not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprint information at issue. Therefore, the sheriff must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

We also note that the remaining information contains Texas motor vehicle information.<sup>1</sup> Section 552.130 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[.]

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.130(a)(1),(2). The sheriff must withhold the information we have marked under section 552.130.

The remaining information contains a social security number. Section 552.147 of the Government Code<sup>2</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the sheriff must withhold the social security number contained in the remaining information under section 552.147.<sup>3</sup>

In summary, the sheriff must release the marked complaints under article 15.26 of the Code of Criminal Procedure to the extent that they were presented to a magistrate in support of the issuance of an arrest warrant. The submitted arrest warrants must be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. To the extent that the sheriff maintains any information that relates to the named individuals as criminal suspects, arrestees, or defendants, other than records of the specific incident listed by the requestor, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code. The sheriff must withhold the information we have marked under common law privacy and section 560.003 of the Government Code in conjunction with section 552.101. The sheriff must withhold the information we have marked under section 552.130 and the social security number under section 552.147. The remaining responsive information must be released to the requestor.

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).

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<sup>2</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

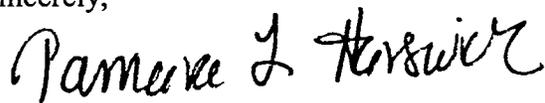
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 236312

Enc. Submitted documents

c: Mr. Robert Herrera, Jr.  
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San Antonio, Texas 78254  
(w/o enclosures)