



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2006

Ms. M. Ann Montgomery
Assistant County & District Attorney
Ellis County
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2006-00036

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 242470.

The Ellis Country Sheriff's Office (the "office") received a request for records pertaining to a specified incident involving a named individual. You state some information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 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 arrest warrant affidavit. 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 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, the 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 and supporting affidavit must be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure.

Section 552.108(a) 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.” Gov’t Code § 552.108(a)(1). 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 *id.* § 552.301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you state that the submitted information pertains to a pending investigation. Based on your representations and our review of the records, we agree that the office may withhold the information under section 552.108(a)(1). 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). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, which you indicate has been released, the office may withhold the remaining requested information from disclosure based on section 552.108(a)(1). 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.

The remaining submitted information contains the arrestee’s social security number. Section 552.147 of the Government Code¹ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the office must withhold the arrestee’s social security number pursuant to section 552.147.²

In summary, the office must release the arrest warrant and supporting affidavit pursuant to article 15.26 of the Code of Criminal Procedure. With the exception of basic information,

¹ 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).

² 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.

which must be released, the office may withhold the remaining submitted information pursuant to section 552.108 of the Government Code. Additionally, the office must withhold the arrestee's social security number pursuant to section 552.147 of the Government Code.³

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 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.

³ As our ruling is dispositive, we do not address your other arguments, except to note that section 552.103 does not protect basic information.

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 cursive script, appearing to read "Margaret Cecere".

Margaret Cecere
Assistant Attorney General
Open Records Division

MC/segh

Ref: ID# 242470

Enc. Submitted documents

c: Mr. Danny Freisner
200 South Rogers, Suite 301
Waxahachie, Texas 75165
(w/o enclosures)