



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2006

Ms. Mary J. Ibarra
Assistant Criminal District Attorney
Bexar County District Attorney's Office
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2006-03675

Dear Ms. Ibarra:

You have asked 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# 245187.

The Bexar County District Attorney's Office (the "D.A.'s Office") received two requests for the prosecutor's files for case numbers 85-CR-1303 and 85-CR-1304 and the March 1, 1985, shooting of Officer Joe de la Luz.¹ The D.A.'s Office indicates it has no information responsive to the shooting and claims the remaining requested information is excepted from public disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted sample of information.² We have also received and considered the comments from counsel for one of the requestors. *See* Gov't Code § 552.304 (person may submit comments as to why information should or should not be released).

¹These cases pertain to the 1985 conviction of Ruben Cantu for capital murder and his execution in 1993.

²We 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.

First, we note the information includes arrest warrants and probable cause affidavits for the arrest warrants. 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. The D.A.’s Office must release the arrest warrants and probable cause affidavits pursuant to article 15.26.

The D.A.’s Office acknowledges that some documents have been released in response to previous open records requests. The D.A.’s Office argues that it may still withhold all of the information under sections 552.101 and 552.108(a)(1) because the D.A.’s Office is presently conducting an ongoing investigation based on new allegations by a prior witness. The information was addressed in Open Records Letter Nos. 2002-1939 (2002) and 2002-2457 (2002). These prior decisions required the release of information subject to subsections 552.022(a)(12) and (17) and basic information about the crime. *See* Gov’t Code §§ 552.022(a)(12) (final opinions issued in adjudication of cases are public), .022(a)(17) (information contained in public court record is public), .108(c) (section 552.108 does not except from disclosure basic information about arrested person, arrest, or crime).

We first consider the assertion that the information is confidential under section 552.101 in conjunction with section 51.14 of the Family Code. We addressed and disposed of this argument in Open Records Letter No. 2002-2457. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. However, section 51.14(d) of the Family Code explicitly excepts “files and records relating to a charge for which a child is transferred under section 54.02 of this code to a criminal court for prosecution” from the protections the statute affords. The information you have submitted to this office reveals that the juvenile in question was transferred to a district court for prosecution as an adult. Therefore, the information is not confidential under former section 51.14(d) of the Family Code and cannot be withheld from disclosure in its entirety pursuant to section 552.101 of the Government Code.

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.” 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* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The D.A.’s Office explains that after Ruben Cantu’s execution, witness Juan Moreno recanted his testimony and now asserts Cantu was not the killer. The D.A.’s Office further explains that Cantu’s co-defendant, David Garza, now admits that Cantu did not commit the crime. Thus, the D.A.’s Office

states, "As a result of these new allegations, Bexar County Criminal District Attorney Susan D. Reed is conducting a criminal investigation of the entire matter." Based upon this representation, we conclude that release of the information would interfere with the detection, investigation, or prosecution of crime. *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). Thus, the D.A.'s Office may withhold most of the information under section 552.108(a)(1).

However, the D.A.'s Office may not withhold any information that it previously released in response to prior open records requests. Section 552.007 of the Government Code does not permit the selective disclosure of information to the public. *See Gov't Code § 552.007; Open Records Decision No. 463 at 1-2 (1987)*. Section 552.007 provides:

- (a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.
- (b) Public information made available under Subsection (a) must be made available to any person.

Gov't Code § 552.007. Once information has been voluntarily released to any member of the public, that same information may not subsequently be withheld from the public, unless its public disclosure is expressly prohibited by law because of a confidentiality statute or a third party's privacy right is implicated. *See id.*; *Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988)*. *But see Open Records Decision Nos. 579 (1990)* (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), *454 at 2 (1986)* (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). When the D.A.'s Office previously released the information and permitted members of the public to have access to the information, it waived any claim it may have had under section 552.108. Section 552.108 does not prohibit public disclosure of the requested information. *See Open Records Decision No. 177 at 3 (1977)* (statutory predecessor to Gov't Code § 552.108 did not prohibit release of information). In addition, the information is not confidential by law or implicates a third party's privacy interest. Thus, once the information has been released, it "must be made available to any person," and the D.A.'s Office may not withhold the previously released information under section 552.108. We further note that because the previously released information was subject to section 552.108(c) and subsections 552.022(a)(12) and 552.022(a)(17), the D.A.'s Office would not be able to withhold such information under section 552.108(a)(1). *See Gov't Code §§ 552.022 (information is public unless confidential by law), 552.108(c) (section 552.108 does not except from disclosure basic information about arrested person, arrest, or crime)*.

Lastly, information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). If any of the responsive information was introduced as evidence at trial, shown in open court, or filed as part of the court case file, it too must be released pursuant to section 552.022(a)(17) of the Government Code.

In summary, the D.A.'s Office must release the arrest warrants and arrest warrant affidavits under article 15.26 of the Code of Criminal Procedure; any information filed with the court or made part of the trial under section 552.022(a)(17); and any information the D.A.'s Office previously released in response to prior open records requests. The D.A.'s Office may withhold the remainder under section 552.108(a)(1). Because section 552.108(a)(1) is dispositive, we do not address your other arguments.

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).

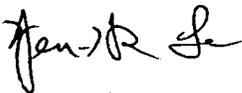
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 245187

Enc: Submitted documents

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