



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 17, 2006

Ms. Kathleen Weisskopf  
Police Legal Advisor  
Arlington Police Department  
P.O. Box 1065, Mail Stop 04-0200  
Arlington, Texas 76004-1065

OR2006-03783

Dear Ms. Weisskopf:

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# 246543.

The Arlington Police Department (the "department") received a request for all information related to a specified investigation. You state that the department will release some of the requested information to the requestor, but claim that the remaining 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 that the submitted information includes arrest warrants and arrest warrant affidavits. The release of this information is governed by article 15.26 of the Code of Criminal Procedure, which 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. This provision makes an arrest warrant expressly public. Furthermore, an affidavit presented to a magistrate in support of the issuance of an arrest warrant is also public under this provision. Although you claim section 552.101 excepts the arrest warrants and supporting affidavits from disclosure, information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, the submitted arrest warrants and arrest warrant affidavits must be released pursuant to article 15.26.

We also note that the submitted information includes search warrant affidavits. The release of a search warrant affidavit is governed by article 18.01 of the Code of Criminal Procedure, which provides in part:

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 18.01(b). This provision makes the submitted search warrant affidavits expressly public if the search warrants have been executed. You claim that the submitted search warrant affidavits are excepted from disclosure under section 552.101. However, as noted above, information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, because the search warrants have been executed, the submitted search warrant affidavits must be released pursuant to article 18.01(b) of the Code Criminal Procedure.

We note the submitted information also includes court filed documents, including search warrants. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See* Gov't Code § 552.022(a)(17) (information contained in public court record is not excepted from required disclosure under Act unless expressly confidential under other law). We note that information that is otherwise confidential under common law privacy may not be withheld in a court filed document. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common law privacy not applicable to court-filed document). Accordingly, the department must release the court-filed documents, which we have marked, pursuant to section 552.022(a)(17) of the Government Code.

Now we turn to your arguments for the remaining submitted information. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* 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. *Id.* at 683.

The information at issue relates to a sexual assault. Generally, only information tending to identify victims of serious sexual offenses is protected by common law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In this instance, however, the requestor knows the identity of the individual involved as well as the nature of the information in question. Therefore, withholding only the victim’s identity from the requestor would not preserve the subject individual’s common law right of privacy. Accordingly, we conclude that to protect the privacy of the individual to whom the information relates, the department must withhold the remaining submitted information in its entirety under section 552.101 of the Government Code in conjunction with common law privacy.

In summary, the department must release the submitted arrest warrants and arrest warrant affidavits without redactions pursuant to article 15.26 of the Code of Criminal Procedure. The department must also release the search warrant affidavits without redactions pursuant to article 18.01 of the Code of Criminal Procedure. The department must release the court filed documents under section 552.022(a)(17) of the Government Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with the doctrine of common law privacy.<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 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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument.

*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,



Lisa V. Cubriel  
Assistant Attorney General  
Open Records Division

LVC/er

Ref: ID# 246543

Enc. Submitted documents

c: Mr. Jack H. Crosby  
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(w/o enclosures)