



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2006

Mr. Joseph Gorfida Jr.
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2006-04528

Dear Mr. Gorfida:

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# 251634.

The Richardson Police Department (the "department") received a request for information relating to a specified case. You inform us that some of the requested information has been released.¹ You claim that the remaining information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the submitted documents include an arrest warrant and a probable cause affidavit. Article 15.26 of the Code of Criminal Procedure provides that "[an] 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 (emphasis added). In this instance, the submitted probable cause affidavit was presented to the magistrate in support of the issuance of the submitted arrest warrant. As a general rule, the exceptions to disclosure found in the

¹See Gov't Code § 552.108(c) (Gov't Code § 552.108 does not except from disclosure basic information about arrested person, arrest, or crime); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App. – Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the submitted arrest warrant and probable cause affidavit must be released, without redaction, under article 15.26 of the Code of Criminal Procedure. We have marked those documents accordingly.

We also note that one of the submitted documents is subject to section 552.022 of the Government Code. Section 552.022 provides for the required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Sections 552.103 and 552.108 are not other law that makes information expressly confidential for the purposes of section 552.022. Therefore, the department may not withhold any of the information that is subject to section 552.022 under section 552.103 or section 552.108. Although section 552.130 is other law that makes information confidential for purposes of section 552.022, none of the information that is subject to this section is excepted from disclosure under section 552.130. Therefore, the department also must release the information, which we have marked, that is subject to section 552.022(a)(17) of the Government Code.

Next, we address your claim under section 552.108 of the Government Code. This section excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). 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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the rest of the information at issue relates to a pending case. Based on your representation, we conclude that the department may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code. *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).

In summary: (1) the department must release the marked arrest warrant and probable cause affidavit, without redaction, under article 15.26 of the Code of Criminal Procedure; (2) the department must release the marked information that is subject to section 552.022(a)(17) of

the Government Code; and (3) the department may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code.²

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).

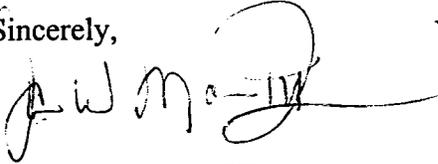
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

²As we are able to make these determinations, we do not address your claims under sections 552.103 and 552.130. We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

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 with in 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a long horizontal flourish extending to the right.

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

JWM/eb

Ref: ID# 251634

Enc: Submitted documents

c: Mr. Fawaz Irshid
P.O. Box 610108
Dallas, Texas 75261
(w/o enclosures)