



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2006

Ms. Jana A. Jones
District Attorney
271st Judicial District
Jack & Wise Counties
101 North Trinity, Suite 200
Decatur, Texas 76234

OR2006-04709

Dear Ms. Jones:

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#248375.

The Wise County District Attorney (the "district attorney") received a request for the investigative file of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note that a portion of the submitted information was obtained pursuant to grand jury subpoenas. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code, so records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* We note that a portion of the submitted information was obtained by the district attorney through the use of grand jury subpoenas at the direction of the grand jury. Thus, we understand that the district attorney is holding these marked records as an agent of the grand jury. Accordingly, we conclude that this information is in the constructive possession of the grand jury and is, therefore, not subject to disclosure under the Act.

We next note that the submitted information include an arrest warrant and the supporting affidavit for the warrant. Article 15.26 of the Code of Criminal Procedure 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. Thus, the arrest warrant and affidavit for arrest warrant that have been presented to a magistrate are made public and must be released 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). The arrest warrant and affidavit at issue here were presented to and signed by a magistrate, therefore, they must be released to the requestor under article 15.26 of the Code of Criminal Procedure.

Next, we note that the remaining information includes certain court filed documents. Section 552.022 of the Government Code provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes these court filed documents expressly public. Therefore, the district attorney may withhold this information only to the extent it is made confidential under other law. Although the district attorney raises section 552.108 for this information, this exception is discretionary and thus, does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the district attorney may not withhold the court filed documents, which we have marked, pursuant to section 552.108. Because you raise no other exceptions to disclosure for the court filed documents, they must be released.

With regard to the remaining information, you assert section 552.108 of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "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(a)(1) as an exception to disclosure of requested

information must demonstrate how and why the release of the requested information would interfere with law enforcement or prosecution. *See id.* §§ 552.108(a), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information pertains to a pending investigation. Based on your representations and our review of the remaining documents, we find that section 552.108(a)(1) is applicable to this information.¹

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See Gov't Code* § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, including detailed description of offense). We note that basic information includes a detailed description of the offense and the social security number of an arrestee. *See Houston Chronicle*, 531 S.W.2d at 186-187.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the district attorney must withhold the arrestee’s social security number under section 552.147.² With the exception of the remaining basic information, which must be released, the remaining information may be withheld under section 552.108 of the Government Code.

In summary, the district attorney must release the submitted arrest warrant and arrest warrant affidavit pursuant to article 15.26 of the Code of Criminal Procedure. The district attorney must also release the court filed documents pursuant to section 552.022 of the Government Code. With the exception of basic information which must be released, the district attorney may withhold the remaining information under section 552.108 of the Government Code. The arrestee’s social security number must be withheld under section 552.147 of the Government Code.

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

¹Because we are able to resolve this under section 552.108, we do not address your other arguments for exception of this information.

²We 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.

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*, 342 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 Schluss 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,



Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 248375

Enc. Submitted documents

c: Mr. John Smart
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(w/o enclosures)