



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 13, 2006

Mr. Darrell G-M Noga  
Fee, Smith, Sharp & Vitullo, L.L.P.  
Three Galleria Tower  
13155 Noel Road, Suite 1000  
Dallas, Texas 75240

OR2006-12024

Dear Mr. Noga:

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# 261886.

The City of Coppell (the "city"), which you represent, received a request for all reports regarding the requestor, his spouse, and a given address. You indicate you have released some of the submitted information. You claim, however, that the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.147 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. 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 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 (1985) (statutory predecessor). Thus, the city must release the marked arrest warrant and arrest warrant affidavit, which you indicate has been released, pursuant to article 15.26 of the Code of Criminal Procedure.

We next note that the submitted information contains court-filed documents. Section 552.022 of the Government Code provides in relevant 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 information filed with a court expressly public. Thus, the city may withhold a court-filed document only to the extent that it is confidential under "other law." You raise section 552.108 of the Government Code for this information. Section 552.108 is a discretionary exception that protects a governmental body's interests and is therefore not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Thus, the city may not withhold the documents at issue under section 552.108. Accordingly, the court filed documents must be released.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code for police report P6025739. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also* Open Records Decision No. 440 at 2 (1986) (addressing statutory predecessor). Because police report P6025739 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, it is within the scope of section 261.201. You do not indicate that the city has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that police report P6025739 is

confidential pursuant to section 261.201 of the Family Code, and the city must withhold it under section 552.101 of the Government Code.<sup>1</sup> See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Next, you raise section 552.108 of the Government Code the remaining information. Section 552.108 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.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information relates to a pending criminal prosecution. Based upon this representation, we conclude that the release of this 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree that section 552.108(a)(1) is applicable to this information.

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* and includes a detailed description of the offense. 531 S.W.2d 177; see Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, which you state has been released, the city may withhold the remaining information from disclosure under section 552.108(a)(1). We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov’t Code § 552.007.

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<sup>1</sup>We note that if the investigation has been referred to the Department of Family and Protective Services (the “department”), a parent or other legal representative of a child who is a requestor may be entitled to access to the department’s records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Fam. Code § 261.201(g).

You also claim that the requestor's social security number is excepted from public disclosure under section 552.147 of the Government Code.<sup>2</sup> Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. However, section 552.147 is based on privacy concerns. Accordingly, pursuant to section 552.023, the requestor has a right of access to his own social security number and the city may not withhold it under section 552.147 of the Government Code.<sup>3</sup> See Gov't Code § 552.023 (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

In summary, the city must release the marked (1) arrest warrant and arrest warrant under article 15.26 of the Code of Criminal Procedure and (2) court-filed documents under section 552.022(a)(17) of the Government Code. The city must withhold police report P6025739 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the city may withhold the remaining information under section 552.108 of the Government Code.<sup>4</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. *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).

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<sup>2</sup>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.

<sup>3</sup>We note that the information being released includes the requestor's social security number. Because section 552.147 protects personal privacy, the requestor has a right of access to his own social security number under section 552.023. Should the city receive another request for these same documents from a person who would not have a right of access to this requestor's private information, the city should resubmit these documents and request another ruling. See Gov't Code §§ 552.301, .302.

<sup>4</sup>As this ruling is dispositive, we need not address your remaining arguments against disclosure.

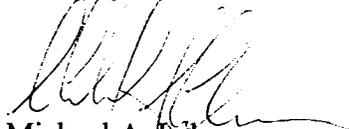
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Michael A. Lehmann  
Assistant Attorney General  
Open Records Division

MAL/dh

Ref: ID# 261886

Enc. Submitted documents

c: Mr. Stephen Perry  
323 Parkwood Lane  
Coppell, Texas 75019  
(w/o enclosures)