



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 20, 2004

Ms. Kelly S. Ripley  
Records Management Coordinator  
Irving Police Department  
305 North O'Connor Road  
Irving, Texas 75061

OR2004-1240

Dear Ms. Ripley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196689.

The Irving Police Department (the "department") received a request for a specific arrest report. You assert that the submitted information is excepted from public disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The department acknowledges, and we agree, that it failed to submit its arguments or the requested information within the statutory time period. *See* Gov't Code § 552.301(e) (providing that governmental body seeking decision from Office of Attorney General must submit certain items to that office within fifteen business days of receiving written request for information). The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You assert that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108. Section 552.103 is a discretionary exception that does not overcome the presumption of openness. *See* Open Records Decision No. 551 (1990) (statutory

predecessor to Gov't Code § 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). Furthermore, you have not demonstrated a compelling reason under section 552.108 to overcome the presumption of openness. *See e.g.*, Open Records Decision No. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for nondisclosure under Gov't Code § 552.108). Thus, the department has waived its claims under sections 552.103 and 552.108. On the other hand, the applicability of section 552.101 does provide a compelling reason to overcome the presumption of openness. We will, therefore, address the department's arguments under section 552.101.

We note, however, that the information includes an arrest warrant affidavit. The Seventy-eighth Legislature amended article 15.26 of the Code of Criminal Procedure to provide that "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information."<sup>1</sup> Thus, the department must release the entire arrest warrant affidavit that was presented to the magistrate.

We now address your arguments under section 552.101 for the remaining information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 261.201(a) of the Family Code 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 this 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 this chapter 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 this chapter or in providing services as a result of an investigation.

Because the requested records relate to allegations of child abuse investigated by the department, the documents are within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we conclude that the remaining records are confidential pursuant to section 261.201 of the

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<sup>1</sup>Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, 2003 Tex. Sess. Law Serv. 1631 (to be codified as an amendment to Crim. Proc. Code art. 15.26).

Family Code and must, therefore, be withheld in their entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, the arrest warrant affidavit must be released in accordance with article 15.26 of the Code of Criminal Procedure. The remaining information, however, must be withheld in its entirety under section 552.101.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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).

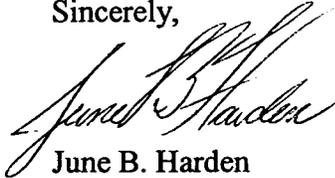
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 196689

Enc: Submitted documents

c: Mr. Loyd G. Richey  
445 East FM 1382, Suite 3-202  
Cedar Hill, Texas 75104  
(w/o enclosures)