



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2004

Ms. Jana A. Jones
District Attorney
Jack & Wise Counties
Wise County Courthouse, Suite 200
Decatur, Texas 76234

OR2004-2689

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198548.

The Wise County District Attorney's Office (the "district attorney") received a request for "[a]ll records collected, assembled, and/or maintained by the [district attorney] which are specifically directed to the Clerk of the Court by Article 17.30 Texas Code of Criminal Procedure. . . and any and all other documents . . . which were forwarded to the [district attorney] instead of the Clerk of the Court." You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of documents.¹

Initially we address your concerns regarding the scope of this request. You state that you eventually receive many of the documents that are the subject of this request. You state, however, that you receive them from law enforcement agencies, not from the clerk. You explain that the "request would require us to have knowledge of what was or was not sent to the clerk and knowledge of everything the magistrate may have done." Further, you explain that the request is not limited to a time frame and at least ten thousand closed cases

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

exist dating back ten to fifteen years. Accordingly, you state that you have no way of determining which records are responsive to this request.

Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 at 8-9 (1990) states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982), 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In this instance, you must make a good-faith effort to relate the request to information in the district attorney's possession. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 at 8 (1990). In assisting the requestor in clarifying his request, you should advise him of the types of information available. Since you have been able to identify certain types of records that you believe fall within the scope of the request, we will address your arguments for these records.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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.

Exhibits D and E consist of records that were used or developed in child abuse investigations. You have not indicated that the district attorney 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 find that section 261.201 of the Family Code is applicable to Exhibits D and E.

Generally, information used or developed in an investigation of child abuse under chapter 261 of the Family Code must be withheld in its entirety under section 261.201. However, because Exhibits D and E contain arrest warrants and supporting affidavits, there is a conflict of laws between section 261.201 and article 15.26. 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.” However, where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). We find that the public availability provision in article 15.26 of the Code of Criminal Procedure is more specific than the general confidentiality provision in section 261.201. Thus, article 15.26 more specifically governs the public availability of the submitted arrest warrants and supporting affidavits and prevails over the more general confidentiality provision in section 261.201. *See Lufkin v. City of Galveston*, 63 Tex. 437 (1885) (when two sections of an act apply, and one is general and the other is specific, then the specific controls); *see also* Gov’t Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision). Therefore, you must release the arrest warrants and supporting affidavits to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. You must, however, withhold the remaining information in Exhibits D and E under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

Next, you claim that Exhibits A, B, and C are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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.” 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* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits A and B relate to pending criminal investigations. Upon review, we conclude that the release of Exhibits A and B 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.

²As we are able to make this determination, we need not address your claim under section 552.132 of the Government Code.

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).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on our review of the information, we find that Exhibit C pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, section 552.108(a)(2) is applicable to Exhibit C.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. We note that Exhibits A, B, and C include arrest warrants and supporting affidavits, as well as court-filed documents. Section 552.022(a)(17) makes documents filed with a court public unless they are confidential under other law. *See also Star-Telegram Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released). Section 552.108 is a discretionary exception and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). Therefore, the district attorney may not withhold the court-filed documents found in Exhibits B and C under section 552.108. *See Open Records Decision Nos. 586 (1991)* (governmental body may waive section 552.108); *see also Open Records Decision No. 665 at 2 n.5 (2000)* (discretionary exceptions generally). Further, you must release the arrest warrant and supporting affidavit found in Exhibit B.

In summary, with the exception of the arrest warrants and supporting affidavits which must be released, the district attorney must withhold Exhibits D and E under section 261.201 of the Family Code. With the exception of the arrest warrant and supporting affidavit, court-filed documents, and basic information which must be released, the district attorney may withhold Exhibits A, B, and C under section 552.108. We note that you have the discretion to release all or part of the remaining information contained in Exhibits A, B, and C that is not otherwise confidential by law. *See Gov't Code § 552.007*.

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).

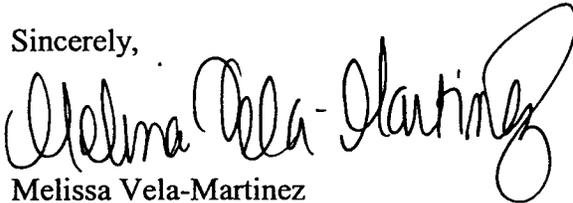
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 198548

Enc. Submitted documents

c: Mr. Randall D. Kelton
P.O. Box 1
Boyd, Texas 76023
(w/o enclosures)