



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2004

Mr. Chris Settle
Assistant City Attorney
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2004-4248

Dear Mr. Settle:

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# 202290.

The City of Dallas Police Department (the "department") received a request for a copy of the offense and arrest report relating to a specified offense. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.¹

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

¹ We 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.

(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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the submitted information was used or developed in an investigation of child abuse. Therefore, the submitted information is generally confidential and not subject to public release under the Act. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

We note, however, that the submitted records contain an arrest warrant and supporting affidavit. Article 15.26 of the Code of Criminal Procedure provides that “[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information.” When 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 of section 261.201(a). Thus, article 15.26 more specifically governs the public availability of the submitted warrant and affidavit 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 act apply, and one is general and other is specific, then specific controls); *see also* Gov’t Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to the general provision). Therefore, the department must release the submitted arrest warrant to the requestor. However, it is unclear whether the arrest warrant affidavit was presented to a magistrate in support of the issuance of the arrest warrant. As we are unable to make this determination, we must rule in the alternative. If it was so presented, then it must also be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. If not, the affidavit must be withheld under section 261.201 of the Family Code.

We also note that section 261.201(a) provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201. Chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor in this instance is a

representative of the Texas State Board of Pharmacy. Section 411.122(a) of the Government Code provides that “an agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency.” Gov’t Code § 411.122(a). We note that the Texas State Board of Pharmacy is specifically subject to section 411.122 of the Government Code. *See* Gov’t Code § 411.122(d)(16). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2).

“Criminal history record information” is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See* Gov’t Code § 411.082(2). Thus, the submitted information contains “criminal history record information.” Accordingly, if the individual who is named as the suspect in the submitted information is either an applicant for a license from the requestor’s agency, a holder of a license from the requestor’s agency, or has requested a determination of eligibility for a license from the requestor’s agency, the requestor is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.087(a)(2), .122(a); *see also* Fam. Code § 261.201(a). Consequently, if these conditions are met, then, in addition to the arrest warrant and the supporting affidavit if presented to a magistrate, the department must make available to the requestor information from the submitted documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, the department must withhold the remaining submitted information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

If, however, the individual who is named as the suspect in the submitted information does not meet any of the criteria of subsection 411.122(a)(1) through (3), or if the release of this information would not be for purposes consistent with the Family Code, then with the exception of the arrest warrant and supporting affidavit if presented to a magistrate, the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure), 440 at 2 (1986) (construing predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 202290

Enc: Submitted documents

c: Ms. Melissa K. Weeden
Investigator
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(w/o enclosures)