



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2005

Ms. Nora Maxey
Detective
Williamson County Sheriff
508 South Rock Street
Georgetown, Texas 78626

OR2005-06207

Dear Ms. Maxey:

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# 228075.

The Williamson County Sheriff's Office (the "sheriff") received a request for information regarding a specific incident. You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information appears to have been obtained pursuant to grand jury subpoenas. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within their actual or constructive possession are not subject to disclosure under the Act. *See* Gov't Code §§ 552.003(1)(B), .0035(a); *see also* Open Records Decision Nos. 513 (1988); 398 at 2 (1983) (grand jury is part of judiciary for purposes of predecessor to Act). 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. Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* However, "the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not

mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney." *Id.*

In this instance, we are unable to determine whether the sheriff maintains the requested information on its own behalf or as an agent of the grand jury. Therefore, to the extent the submitted information is maintained by the sheriff for or on behalf of the grand jury, it is in the custody of the sheriff as agent of the grand jury and not subject to disclosure under the Act. To the extent that it is not so maintained, it is subject to the Act and may be withheld only if an exception under the Act is shown to apply. As we are unable to determine the extent to which the submitted information is maintained for or on behalf of the grand jury, we will also address the exceptions that you claim under the Act for this information.

We next note that the submitted information includes a search warrant affidavit. An affidavit to support a search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc. art. 18.01(b). If the submitted search warrant has been executed, the sheriff must release the supporting affidavit. *See generally* Open Records Decision No. 525 (1989) (stating that exceptions to disclosure do not, as general rule, apply to information made public by other statutes). If not, we will consider the sheriff's claim for the affidavit and the remaining information.

The submitted information also contains an arrest warrant and supporting affidavit. 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.

Code Crim. Proc. art. 15.26 (emphasis added). This provision makes the submitted arrest warrant and supporting affidavit expressly public. The exceptions found in the Act do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the sheriff must release the submitted arrest warrant and supporting affidavit to the requestor.

We turn now to the remaining submitted information. We note that this information pertains to the sexual assault of a child. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. This section encompasses confidentiality provisions such as section 261.201(a) of the Family Code, which 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, 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). The information at issue was used or developed in an investigation of alleged aggravated sexual assault of a child. Thus, we find that the information is generally confidential under section 261.201 of the Family Code. However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* We note that section 773.0612 of the Health and Safety Code constitutes “applicable state law” in this instance.

As you acknowledge, the requestor in this case is a representative of the Texas Department of State Health Services (“TDSHS”). The requestor has informed the sheriff that TDSHS seeks the information for the “determination and evaluation of the nature and seriousness of the crime as it relates to EMS personnel certification” conducted under chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by TDSHS. *See* Health & Safety Code § 773.041 (person may not practice as any type of emergency medical services personnel unless certified by TDSHS under chapter 773). Section 773.0612 of the Health and Safety Code provides:

(a) [TDSHS] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification is considered to have given consent to a representative of [TDSHS] entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the [Texas Board of Health].

Health & Safety Code § 773.0612. The individual at issue is a certified emergency medical technician. Thus, we find that the submitted documents are directly related to emergency medical services personnel for purposes of section 773.0612(a). The information you have provided reflects that TDSHS intends to use the requested information for purposes consistent with chapter 773 of the Health and Safety Code. We therefore determine that the requestor has a statutory right of access to the information under section 773.0612(a) of the Health and Safety Code. Consequently, if the sheriff determines that TDSHS intends to use the information for purposes consistent with the Family Code, the sheriff must release the remaining submitted information to the requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to the Act).¹ We note that information obtained by TDSHS pursuant to section 773.0612(a) is confidential in the hands of TDSHS. *See* Health & Safety Code § 773.0612(b).

If, however, the sheriff determines that TDSHS does not seek this information for purposes consistent with the Family Code, the sheriff must withhold the remaining information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *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), 440 at 2 (1986) (predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

In summary, to the extent the submitted information is maintained by the sheriff for or on behalf of the grand jury, it is in the custody of the sheriff as agent of the grand jury and not subject to disclosure under the Act. To the extent that it is not so maintained, it is subject to the Act and may be withheld only if an exception under the Act is shown to apply. If the submitted search warrant has been executed it must be released pursuant to article 18.01 of the Code of Criminal Procedure. The submitted arrest warrant and supporting affidavit must be released in accordance with article 15.26 of the Code of Criminal Procedure. If the sheriff determines that the requestor intends to use the remaining submitted information for purposes consistent with the Family Code, the sheriff must release the remaining submitted information. However, if the sheriff determines that the requestor does not intend to use the

¹ We note that because the requestor has a special right of access to this information in this instance, the sheriff must again seek a decision from this office if it receives another request for the same information from another requestor.

² Based on our findings with respect to section 261.201 of the Family Code and section 773.0612(a) of the Health and Safety Code, we need not reach your claim under sections 552.103, 552.108, and 552.117. *See* Open Records Decision No. 451 (1986).

remaining submitted information for purposes consistent with the Family Code, the sheriff must withhold it from disclosure pursuant to section 552.101 if the Government Code in conjunction with 261.201(a) of the Family 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 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).

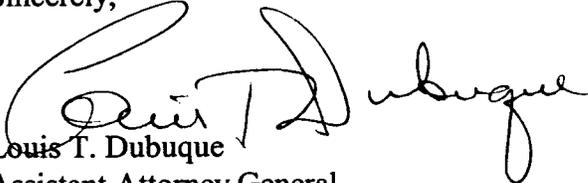
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,


Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/seg

Ref: ID# 228075

Enc. Submitted documents

c: Ms. June McGuire
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(w/o enclosures)