



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

November 16, 2005

Mr. J. Andrew Bench  
Attorney at Law  
P.O. Box 1353  
Greenville, Texas 75403

OR2005-10355

Dear Mr. Bench:

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# 238926.

The City of Greenville (the "city"), which you represent, received a request for the entire file regarding an offense committed on a particular date by a named individual. 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 information.

We initially note that the submitted information contains two *capias*, two complaint affidavits and two warrants of arrest. Section 15.26 of the Code of Criminal Procedure states in part:

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.

Crim. Proc. Code art. 15.26; *see id.* art. 45.045 (court may order issuance of *capias pro fine* to arrest defendant not in custody when judgment rendered or if defendant fails to satisfy judgment). Article 15.04 of the Code of Criminal Procedure provides that “[t]he affidavit made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense.” *Id.* art. 15.04. Case law indicates that a complaint can support the issuance of an arrest warrant. *See Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.— Corpus Christi 1990, pet. ref’d); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.— Houston [14th Dist.] 1996, pet. ref’d) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). The submitted complaint affidavits reflect that they were presented to a magistrate to support the issuance of the arrest warrants. Thus, these *capiases*, arrest warrants, and arrest warrant affidavits are made public under article 15.26 of the Code of Criminal Procedure. As a general rule, 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 (1989)*. Accordingly, we conclude that the city must release these *capiases*, arrest warrants, and arrest warrant affidavits to the requestor pursuant to article 15.26 of the Code of Criminal Procedure.

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. This section encompasses information protected by other statutes. You claim that the submitted information is excepted under section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007 of the Family Code provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. As the individual identified in the submitted information is seventeen years old, and therefore not a “child” as defined by section 51.02, section 58.007(c) is not applicable. Thus, none of the submitted information is confidential under section 58.007 of the Family Code.

We note, however, that section 552.130 of the Government Code excepts from disclosure information that “relates to. . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.”<sup>1</sup> Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the city must withhold the Texas motor vehicle or personal identification document information we have marked in the submitted documents. The remaining information must be released.

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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MT/jh

Ref: ID# 238926

Enc. Submitted documents

c: Mr. James Drumm  
3405 Washington Street  
Greenville, Texas 75401  
(w/o enclosures)