



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2006-01729

Dear Ms. Joe:

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# 242675.

The Travis County District Attorney's Office (the "district attorney") received a request for all records pertaining to a specified individual's conviction for aggravated sexual assault of a child. 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 representative sample of information.¹

Initially, we note that the submitted information includes arrest warrants and an arrest warrant affidavit. 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." Crim. Proc. Code art. 15.26. 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 (1985). Thus, the district attorney must

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.

release the arrest warrants and arrest warrant affidavit, which we have marked, in their entirety pursuant to article 15.26.

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 statute. 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.

Fam. Code § 261.201(a). Because the remaining submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged child abuse or neglect, the information is within the scope of section 261.201 of the Family Code. 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, the submitted documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district attorney must withhold the remaining submitted information from disclosure under section 552.101 of the Government Code as information made confidential by law.² Furthermore, because section 261.201(a) protects all “files, reports, communications, and working papers” related to an investigation of child

² We note that the requestor is from the University of Houston Innocence Network and may have reviewed the submitted information pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) (prosecution is required to provide defense with all potentially exculpatory evidence). Regardless of whether the review was pursuant to *Brady*, the information at issue is confidential under section 261.201 of the Family Code and that confidentiality is not waived by any previous review. *See* Open Records Decision No. 454 (1986) (if a governmental body releases information because it reasonably concludes that it is constitutionally required to do so, the decision to release it is not voluntary, but one compelled by law, and therefore under such circumstances, the governmental body does not waive its confidentiality claims); Open Records Decision No. 490 (1988) (protection for information deemed confidential by law is not ordinarily waived through “selective disclosure”).

abuse, the district attorney must not release front page offense report information in cases of alleged child abuse.

In summary, the district attorney must release the arrest warrants and arrest warrant affidavit, which we have marked, pursuant to article 15.26 of the Code of Criminal Procedure. The district attorney must withhold the remaining submitted information from disclosure under section 552.101 of the Government Code as information made confidential by law.³

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); *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

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/segh

Ref: ID# 242675

Enc: Submitted documents

c: Ms. Heather Harrison
Texas Innocence Network
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(w/o enclosures)