



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2006

Ms. Lisa K. Mitchell
Assistant District Attorney
Collin County Courthouse
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2006-02592

Dear Ms. Mitchell:

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# 244249.

The Collin County District Attorney's Office (the "district attorney") received a request for all files, records, and any other documents pertaining to the arrest, investigation, and prosecution of a named individual involved in an aggravated sexual assault. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your representation that the information in Exhibit C relates to grand jury proceedings. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). 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. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* However, you have not demonstrated, nor does it appear to this office, that the documents in Exhibit C are in fact in

the constructive possession of the grand jury. Thus, the documents in Exhibit C are subject to disclosure under the Act and the ruling below.

Next, we note that the submitted information includes an arrest warrant and probable cause affidavit. Article 15.26 of the Code of Criminal Procedure states that “[t]he 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.” Crim. Proc. Code art. 15.26. Therefore, the arrest warrant and supporting affidavit are made public under article 15.26. Exceptions to disclosure under the Act generally do not apply to information that is made public by other statutes, such as article 15.26 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, the arrest warrant and supporting affidavit we have marked must be released to the requestor.

We note that the submitted information also includes a search warrant affidavit. The release of a search warrant affidavit is governed by article 18.01 of the Code of Criminal Procedure, which provides in part:

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate’s clerk shall make a copy of the affidavit available for public inspection in the clerk’s office during normal business hours.

Crim. Proc. Code art. 18.01(b). Here, the search warrant was executed. Thus, article 18.01 makes the search warrant affidavit at issue expressly public. As previously noted, 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. Therefore, pursuant to article 18.01(b), the district attorney must release the search warrant affidavit we have marked.

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. This section encompasses information made confidential by statute. 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 requested information was used or developed in an investigation into the aggravated sexual assault of a child, it is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021). 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 remaining requested 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 these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.

In summary, the arrest warrant and supporting affidavit we have marked must be released pursuant to article 15.26 of the Code of Criminal Procedure. Pursuant to article 18.01(b) of the Code of Criminal Procedure, the district attorney must release the search warrant affidavit we have marked. Finally, the district attorney must withhold the remaining information from disclosure under section 552.101 of the Government Code as information made confidential under section 261.201 of the Family Code.¹

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).

¹ As our ruling is dispositive we do not address your other arguments against disclosure.

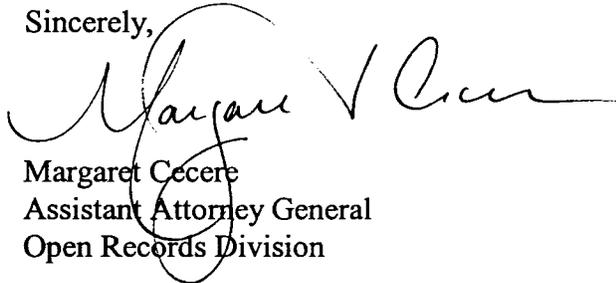
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,



Margaret Cecere
Assistant Attorney General
Open Records Division

MC/sdk

Ref: ID# 244249

Enc. Submitted documents

c: Mr. Walter M. Reaves, Jr.
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(w/o enclosures)