ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2006

Mr. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2006-04733

Dear Mr. Middlebrooks:

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# 252818.

The Dallas Police Department (the "department") received a request for a specified police report. 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 first note that the submitted information includes an arrest warrant and supporting affidavit. Article 15.26 of the Code of Criminal Procedure provides the following:

> 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.

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 (1989). Therefore, to the extent the warrant was issued and the supporting

affidavit presented to the magistrate in support of the issuance of the warrant, these documents must be released to the requestor pursuant to article 15.26.

You assert that the remaining information is excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

> 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 information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, it is within the scope of section 261.201. You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that the information at issue is confidential pursuant to section 261.201 of the Family Code, and the department must withhold it under section 552.101 of the Government Code.[1] *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

To conclude, pursuant to article 15.26 of the Code of Criminal Procedure, the department must release the submitted warrant to the extent it was issued and its supporting affidavit to the extent the affidavit was presented to the magistrate in support of the issuance of the warrant. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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[1]We note that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, a parent of the child may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

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 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. 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vh2

Ref: ID# 252818

Enc. Submitted documents

c: Ms. Robin Douglas
423 East Ledbetter #614
Dallas, Texas 75216
(w/o enclosures)