



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2006

Ms. Mary Kayser  
City Secretary  
City of Burleson  
141 West Renfro  
Burleson, Texas 76028-4261

OR2006-05320

Dear Ms. Kayser:

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# 249783.

The City of Burleson (the "city") received a request for all information regarding a specific incident. You claim that the submitted 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.

Initially, we note the submitted information 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). This provision makes the submitted search warrant affidavit expressly public if the search warrant has been executed. Similarly, the submitted information also includes an arrest warrant. The release of this information is governed by article 15.26 of the Code of Criminal Procedure, which 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.

Crim Proc. Code art. 15.26. This provision makes the submitted arrest warrant expressly public. We note that information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under the Act. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976).

However, you claim that the submitted arrest warrant and search warrant affidavit are confidential under section 261.201 of the Family Code. Generally, all information subject to section 261.201 is confidential. *See* Fam. Code § 261.201. Thus, in this instance, there would be a conflict of laws between section 261.201 and articles 15.26 and 18.01. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, the statutory provision for access to a search warrant affidavit under article 18.01 of the Code of Criminal Procedure is more specific than the general protection afforded to information under section 261.201 of the Family Code. *See also* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Here, the search warrant has been executed; therefore, the city must release the search warrant affidavit, which we have marked, pursuant to article 18.01(b). Likewise, the statutory provision for access to an arrest warrant under article 15.26 of the Code of Criminal Procedure is more specific than the general protection afforded to information under section 261.201 of the Family Code. Therefore, the city must release the submitted arrest warrant, which we have marked, pursuant to article 15.26 of the Code of Criminal Procedure.

You claim 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." Gov't Code § 552.101. This section encompasses information that is 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). Here, the submitted information consists of a report used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code § 261.001(1) (defining “abuse” for the purposes of chapter 261 of the Family Code). Thus, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the city’s police department, which investigated the incident, has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. We note that although the requestor is the victim in the submitted information, the requestor does not fall within any category of persons or entities that are authorized to receive this confidential information under section 261.201. *See* Fam. Code §§ 261.201(b)-(g) (enumerating entities authorized to receive section 261.201 information). Accordingly, we conclude that the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup>

In summary, the city must release the arrest warrant pursuant to article 15.26 of the Code of Criminal Procedure and the search warrant affidavit pursuant to article 18.01(b) of the Code of Criminal Procedure. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Government 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).

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<sup>1</sup>We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, specified individuals may have the statutory right to review that file. *See* Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Law 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

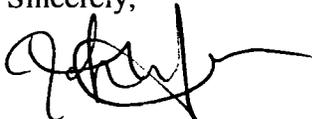
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/kr:l

Ref: ID# 249783

Enc. Submitted documents

c: Ms. Amanda Ritchey  
2921 Waldron Road, Lot #40  
Corpus Christi, Texas 78418  
(w/o enclosures)