ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2006

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2006-06038

Dear Ms. Graham:

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# 251060.

The Mesquite Police Department (the "department") received a request for information relating to the requestor. You indicate that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the submitted documents include arrest warrants, the affidavits for the warrants, and a determination of probable cause. Article 15.26 of the Code of Criminal Procedure provides that "[an] 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 (emphasis added). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). In this instance, the submitted affidavits for the arrest warrants were presented to the magistrate who issued the warrants. Therefore, the arrest warrants, the affidavits, and the attachments to the affidavits that we have marked are made public by and must be released under article 15.26 of the Code of Criminal Procedure. It is not clear, however, whether the determination of probable cause was presented to a magistrate in support of the issuance of an arrest warrant. Accordingly, we must rule in the alternative.

Thus, if the determination of probable cause that we have marked was in fact "presented to [a] magistrate in support of the issuance of [an arrest] warrant," then it also is made public by article 15.26 of the Code of Criminal Procedure and must be released. If it was not so presented, then it is not made public by article 15.26 and must be disposed of along with the rest of the submitted information.

We also note that some of the information submitted as Exhibit 3 is subject to section 552.022 of the Government Code. Section 552.022 provides for the required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although your claimed exceptions to disclosure are confidentiality provisions for the purposes of section 552.022, none of the information that is subject to section 552.022 is excepted from disclosure under section 552.101, section 552.130, or section 552.147 of the Government Code. Therefore, the section 552.022 information that we have marked must also be released.

Next, we address your claims under section 552.101, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) provides in part:

> (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 [chapter 261 of the Family Code] and the identity of the person making the report; and
> >
> > (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because the information submitted as Exhibit 2 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, this information falls within the scope of section 261.201(a). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the information in Exhibit 2 is generally confidential under

section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing statutory predecessor).

We note, however, that Exhibit 2 contains the requestor's fingerprint. The public availability of a fingerprint is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides in part that "[i]n this chapter . . . 'Biometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Sections 560.001, 560.002, and 560.003 are intended to protect the privacy of a living individual to whom a fingerprint or other biometric identifier pertains. Therefore, the requestor has a right of access to his own fingerprint under section 560.002(1)(A) of the Government Code.

Generally, information used or developed in an investigation of child abuse under chapter 261 of the Family Code must be withheld in its entirety under section 261.201 of the Family Code. Thus, there is a conflict of laws between section 261.201 and section 560.002 of the Government Code. However, where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See* Gov't Code § 311.025(a) (if statutes enacted at same or different sessions of legislature are irreconcilable, statute latest in date of enactment prevails); *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 public availability provision of section 560.002 of the Government Code is more specific than the general confidentiality provision in section 261.201 of the Family Code. Thus, section 560.002 more specifically governs the public availability of the submitted fingerprint and prevails over the more general confidentiality provisions of section 261.201. *See Lufkin v. City of Galveston*, 63 Tex. 437 (1885) (when two sections of an act apply, and one is general and the other is specific, then the specific controls); *see also* Gov't Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision). Therefore, the fingerprint in Exhibit 2 must be released to the requestor under section 560.002 of the Government Code. The department must withhold the rest of the information in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also raise section 552.101 in conjunction with the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no

legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You state that you have marked information in Exhibit 3 that the department seeks to withhold under section 552.101 in conjunction with common law privacy. We note that the only such information in Exhibit 3 consists of the requestor's fingerprints. As previously explained, the requestor has a right of access to his own fingerprints under section 560.002 of the Government Code. The department may not withhold that information on privacy grounds under section 552.101. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).[1] We note that the remaining information in Exhibit 3 relates to alleged criminal offenses, which are a matter of legitimate public interest. Having reviewed the information in question, we conclude that none of the information is protected by common law privacy. We therefore conclude that the department may not withhold any of the information in Exhibit 3 on privacy grounds under section 552.101.

Section 552.130 of the Government Code excepts from public disclosure a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). We agree that the department must withhold the Texas driver's license number that you have marked in Exhibit 3 under section 552.130.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[2] Gov't Code § 552.147(a). We agree that the social security number that you have marked in Exhibit 3 must be withheld under section 552.147.

In summary: (1) the marked arrest warrants, affidavits, and attachments to the affidavits must be released under article 15.26 of the Code of Criminal Procedure; (2) the marked determination of probable cause must also be released under article 15.26 if it was presented

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[1]Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

[2]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

to a magistrate in support of the issuance of an arrest warrant; (3) the marked section 552.022 information must also be released; (4) the requestor's fingerprints in Exhibits 2 and 3 must be released under section 560.002 of the Government Code; (5) the rest of the information in Exhibit 2 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (6) the Texas driver's license number must be withheld under section 552.130 of the Government Code; and (7) the social security number must be withheld under section 552.147 of the Government Code. The rest of the submitted information must be released.[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).

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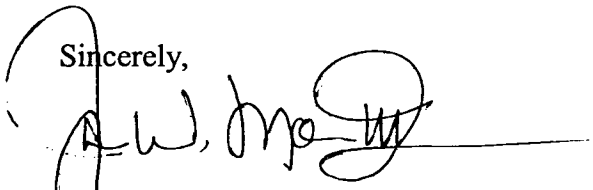
[3]We note that the requestor has a right of access to information that the department would be required to withhold from the public to protect his privacy interests. Should the department receive another request for this information from a person who would not have a right of access, the department should resubmit this same information and request another ruling. *See* Gov't Code §§ 552.301, .302.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 251060

Enc: Submitted documents

c: Mr. Earl Bradley
14818 Marsha Drive
Balch Springs, Texas 75180
(w/o enclosures)