



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2006

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
City of Killeen  
402 North Second Street  
Killeen, Texas 76541-5298

OR2006-06183

Dear Ms. Mapes:

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# 251350.

The Killeen Police Department (the "department") received five requests for a videotape and certain other information relating to an injury to a child. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the department did not submit some of the requested information to this office within the fifteen-business-day period prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(e)(1)(D). Failure to comply with section 552.301 in requesting an attorney general decision results in a legal presumption that the information in question is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). A claim under section 552.108 of the Government Code, which is a discretionary exception to disclosure that may be waived, is generally not a compelling reason for non-disclosure under section 552.302. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the information that was not timely submitted may not be withheld under section 552.108. You also claim, however, that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the

Family Code. As your claim under section 552.101 can provide a compelling reason for non-disclosure, we will address your arguments under that exception. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).*

We note, however, that the submitted information includes affidavits for arrest warrants. 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. 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).*

You claim that the arrest warrant affidavits 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.* However, information made public by article 15.26 of the Code of Criminal Procedure is not made confidential by section 261.201. *See City of Waco v. Abbott*, No. 07-05-0067-CV, 2006 WL 1490540, at 3 (Tex. App.—Amarillo 2006, May 31, 2006, no. pet h.) (holding that arrest warrant affidavits filed in child abuse and neglect cases, made by peace officers, and signed before and presented to a magistrate for the purpose of supporting the issuance of an arrest warrant, are not confidential under section 261.201 of the Family Code). Therefore, the arrest warrant affidavits that we have marked must be released to the requestor without redactions under article 15.26 of the Code of Criminal Procedure.

Next, we address your claim under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 552.101 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 another statute makes confidential. Section 261.201(a) 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 [the Family 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, 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 rest of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation

under chapter 261 of the Family Code, we agree that it 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 department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

In summary: (1) the marked arrest warrant affidavits must be released without redactions under article 15.26 of the Code of Criminal Procedure; and (2) the department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup>

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

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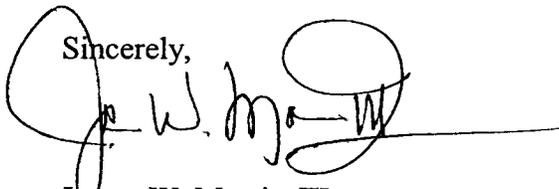
<sup>1</sup>As we are able to make these determinations, we do not address your claim under section 552.108 of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'J. W. Morris, III', with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 251350

Enc: Submitted documents

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