



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2006

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2006-06813

Dear Mr. Weir:

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# 252714.

The San Antonio Police Department (the "department") received a request for information regarding investigation number 90-438599 relating to the disappearance and murder of a named child. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains an arrest warrant. 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 at issue is 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, 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 submitted arrest warrant, which we have marked, must be released to the requestor without redactions.

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 exception encompasses information that other statutes make confidential. Section 261.201 of the Family Code provides in relevant 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 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, audiotapes, videotapes, 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). Upon review of the remaining information at issue, we find that this information was not used or developed in an investigation of child abuse under chapter 261 because it relates to a capital murder investigation. Thus, we conclude that the remaining information at issue is not confidential under section 261.201 of the Family Code and may not be withheld under section 552.101 on that basis.

We now turn to your claim of section 552.108 of the Government Code for the remaining information. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue pertains to an open criminal investigation. Based on your representation and our review, we determine that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—

Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 185. Thus, with the exception of basic front page offense and arrest information, the department may withhold the remaining information at issue based on section 552.108(a)(1). We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the marked arrest warrant must be released pursuant to article 15.26 of the Code of Criminal Procedure. Except for basic information, the department may withhold the remainder of the information at issue under section 552.108(a)(1) 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).

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 252714

Enc. Submitted documents

c: Ms. Lise Olsen
Houston Chronicle
c/o Mr. Charles H. Weir
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(w/o enclosures)