



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2006

Ms. Christina O'Neil
Assistant District Attorney
Dallas County Criminal District Attorney's Office
Frank Crowley Courts Building
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2006-07963

Dear Ms. O'Neil:

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# 254948.

The Dallas County District Attorney's Office (the "district attorney") received a request for a copy of the case file, including any affidavit or warrant, pertaining to a named Irving Police Department officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, the submitted information includes both arrest warrants and their corresponding probable cause affidavits. 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). Thus, the arrest warrants and affidavits must be released to the requestor. 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 purpose of supporting the issuance of an arrest warrant, are not confidential under section 261.201 of the Family Code).

Next, we address your arguments against disclosure for the remaining submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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). Because the remaining submitted information was used or developed in an investigation of injury to a child, we find that the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated that the district attorney has adopted a rule that governs the release of this type of information. We therefore assume that no such rule exists. Given this assumption, we conclude that the district attorney must withhold the remaining submitted information its entirety pursuant to section 552.101 in conjunction with section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).

In summary, the submitted arrest warrants and arrest warrant affidavits must be released to the requestor. The remaining submitted information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we reach these conclusions, we need not address your remaining arguments against disclosure.

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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/eb

Ref: ID# 254948

Enc. Submitted documents

c: Mr. S. Paul Jordan
1519 Arcady Lane
Irving, Texas 75061
(w/o enclosures)