ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2006

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

OR2006-08400

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# 255382.

The City of Mesquite (the "city") received a request for (1) "any and all log, police reports, supplemental police reports, notes, dispositions, and all other document(s) in [a specific case]" and (2) "any and all attorney investigation and disposition notes or records." The requestor subsequently narrowed his request to include the "arrest warrant, affidavit supporting arrest warrant, affidavit for warrantless arrest, reports of the [police department], documents showing all activity conducted by [the police department] as a result of alleged crime, the ultimate charges brought against [a named individual], and the disposition of the case." You claim that the requested 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 reviewed the submitted information.

Initially, you inform us that a portion of the information responsive to this request is the identical information that was the subject of a previous ruling from this office. In Open Records Letter No. 2006-04055 (2006), the city received a request for the arrest reports and prosecution reports pertaining to a named individual and a specific incident. We concluded that the city must withhold the information submitted in that instance under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Therefore, assuming that the four criteria for a "previous determination" established by this office in

Open Records Decision No. 673 (2001) have been met, we conclude that the city must continue to rely on our decision in Open Records Letter No. 2006-04055 with respect to the information that was previously ruled upon in that decision.[1] *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

Next, we note that the requested information includes an arrest warrant and supporting affidavit. 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. As a general rule, the exceptions found in chapter 552 of the Government Code do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the arrest warrant and the supporting affidavit must be released to the requestor.

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 section encompasses information protected by other statutes. 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, 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). The remaining information was used or developed in an investigation of indecency with a child. Thus, we find that the remaining information is within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume

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[1] The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

that no such regulation exists. Given that assumption, the remaining information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold the remaining information from disclosure under section 552.101 of the Government Code as information made confidential by law.

In summary, to the extent that the documents at issue here are precisely the same records that we addressed in Open Records Letter No. 2006-04055, we conclude that the city must continue to rely on that letter ruling as a previous determination. The city must release the submitted arrest warrant and supporting affidavit pursuant to article 15.26 of the Code of Criminal Procedure. The remaining information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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,

Anne Prentice

Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 255382

Enc. Submitted documents

c: Mr. J. Dwight Carmichael
McGregor, McGregor, and Carmichael, P.C.
64 West Elm Street
Hillsboro, Texas 76645
(w/o enclosures)