



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2006

Ms. Patrice Fogarty
City Secretary
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489-2170

OR2006-11258

Dear Ms. Fogarty:

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# 260561.

The Missouri City Police Department (the "department") received a request for information pertaining to (1) an "investigation into allegations of sexual abuse, inappropriate touching and/or child endangerment by [a named individual] of any of [the requestor's] children[;]" (2) an "investigation into allegations of interference with a 911 call by [the named individual] and involving any of [the requestor's] children[;]" (3) an "investigation into allegations of child abuse, endangerment or neglect of any of [the requestor's] children[;]" and (4) "communications or correspondence with any third party regarding [the requestor's] children[.]" 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 reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the information submitted as Exhibit B includes an arrest warrant and its supporting probable cause 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. 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 warrant and affidavit 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, pet. filed) (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).

We next address your claim under section 552.101 of the Government Code and section 261.201 of the Family Code with respect to the remainder of Exhibit B. Section 552.101 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 [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). We agree that the remainder of Exhibit B consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. Thus, we find that this information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the remaining information submitted as Exhibit B is confidential under section 261.201 of the Family Code.

The requestor asserts that she has a right of access to this information because she is the mother of the minor children at issue in the report. We note that section 552.023 of the Government Code provides that a person or a person’s authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person’s privacy interest. Gov’t Code § 552.023. However, release

of information made confidential by section 261.201 of the Family Code is governed by the provisions of chapter 261 of the Family Code, not section 552.023 of the Government Code. The requestor does not have a special right of access to this information under section 261.201. *See* Fam. Code § 261.201. We therefore conclude that the remaining information in Exhibit B must be withheld under section 552.101 of the Government Code as information made confidential by section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Next, you claim that Exhibit C is excepted from disclosure under section 552.108 of the Government Code. The requestor similarly asserts that she has a right of access to this information because it involves her minor children. As stated above, section 552.023 of the Government Code provides that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *Id.* § 552.023. However, section 552.108 is not an exception to disclosure that is intended to protect the privacy of any individual. *See id.* § 552.108 (section 552.108 intended to protect criminal law enforcement and prosecutorial interests); *see also id.* § 552.023(b) (governmental body may assert provisions of Act or other law that are not intended to protect person's privacy interests to withhold information to which requestor may otherwise have a special right of access). Thus, section 552.023 is not relevant in determining the applicability of section 552.108. As such, we will consider the department's claim under this exception.

Section 552.108(a) 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." *Id.* § 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 submitted as Exhibit C relates to an open criminal case being prosecuted by the Fort Bend County District Attorney. Based upon this representation, we conclude that the release of Exhibit C 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; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

Houston Chronicle). Thus, with the exception of the basic front page offense and arrest information, the department may withhold Exhibit C from disclosure based on section 552.108(a)(1). We note that the department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

Lastly, we note that the remaining information at issue in Exhibit C includes two arrestees' social security numbers. 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. *Id.* § 552.147. One of the social security numbers at issue belongs to the requestor. Because section 552.147 is intended to protect the privacy interests of individuals, the requestor has a right of access to her own social security number under section 552.023 and it may not be withheld from her under section 552.147. *See id.* § 552.023. Therefore, the department must only withhold the other arrestee's social security number in Exhibit C pursuant to section 552.147.²

To conclude, the arrest warrant and the supporting probable cause affidavit in Exhibit B must be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. The remainder of Exhibit B must be withheld in accordance with section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold Exhibit C pursuant to section 552.108(a)(1) of the Government Code. The other arrestee's social security number in Exhibit C must be withheld under section 552.147 of the Government Code. The remaining basic information in Exhibit C must be released.³ 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

²We 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.

³Because some of this information would not be releasable with respect to the general public, the department should again seek our decision if it receives another request for this information from a person other than the requestor or her authorized representative.

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# 260561

Enc. Submitted documents