ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2006

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2006-11277

Dear Mr. Rodriguez:

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# 264234.

The El Paso Police Department (the "department") received a request for a specified case report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a complaint 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[.]" Article 15.04 of the Code of Criminal Procedure provides that "[t]he affidavit made before the magistrate or district or county attorney is called a 'complaint' if it charges the commission of an offense." Case law indicates that a complaint can support the issuance of an arrest warrant. *See Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref'd) (complaint in support of arrest warrant need not contain same particularity required of indictment); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref'd). The exceptions to disclosure in the Act 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).

You claim that this document 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, n.p.h.) (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). In this instance, however, it is not clear whether the complaint affidavit was presented to a magistrate in support of the issuance of an arrest warrant. Accordingly, we must rule in the alternative. Thus, to the extent that the complaint affidavit that we have marked was in fact "presented to [a] magistrate in support of the issuance of [an arrest] warrant," it is made public by article 15.26 of the Code of Criminal Procedure and must be released in its entirety. To the extent that the complaint affidavit was not so presented, it is not made public by article 15.26, and it must be disposed of in accordance with the rest of this decision.

You assert the remaining information is excepted under section 552.101 of the Government Code, which 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, 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 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011). You inform us that the department has not adopted any rules that govern the release of this type of information. Thus, we conclude that the department must withhold the remaining requested information pursuant to section 552.101 of the Government Code

in conjunction with section 261.201 of the Family Code.[1] *See* Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).

To conclude, if the marked complaint affidavit was presented to a magistrate or district or county attorney in support of the issuance of an arrest warrant, it is made public by article 15.26 of the Code of Criminal Procedure and must be released in its entirety. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.[2]

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

---

[1] We 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).

[2] Because we are able to resolve this under section 261.201, we do not address your remaining argument.

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,

Gilbert Saenz
Assistant Attorney General
Open Records Division

GNS/sdk

Ref: ID# 264234

Enc. Submitted documents

c: Ms. Raquel Gamez
705 Soya Drive
El Paso, Texas 79927
(w/o enclosures)