



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2006

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2006-11426

Dear Ms. Camp-Lee:

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# 264596.

The Round Rock Police Department (the "department"), which you represent, received a request for "[a]ny and all documents related to the August 24 riot incident at Stony Point High School, including incident reports and security camera video." 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.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted the requested security camera video. To the extent this information existed on the date the department received this request, we assume you have released it. If you have not released any such information, you must do so at this time.² See Gov't Code § 552.301(a), .302; see also Open Records Decision No. 664 (2000)

¹You also inform us that the department will be redacting the social security numbers of living persons pursuant to section 552.147 of the Government Code. See Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision from attorney general).

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that the submitted information includes an arrest warrant and three complaints. Article 15.26 of the Code of Criminal Procedure provides:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Code Crim. Proc. art. 15.26 (emphasis added). 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." Code Crim. Proc. art. 15.04. 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)*. Therefore, if the arrest warrant, which we have marked, has been executed, it must be released pursuant to article 15.26. To the extent that the complaints, which we have also marked, were presented to a magistrate in support of the issuance of an arrest warrant, the complaints must also be released under article 15.26. To the extent that the arrest warrant and complaints are not subject to section 15.26, they must be disposed of in accordance with the rest of this ruling.

You assert that the remaining information is excepted under 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 section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The remaining documents contain information that involves juvenile conduct occurring after September 1, 1997. None of the exceptions in section 58.007 appears to apply. Therefore, the remaining information is confidential pursuant to section 58.007(c) of the Family Code and the department must withhold it under section 552.101 of the Government Code.³

To conclude, if the submitted arrest warrant, which we have marked has been executed, it must released the marked arrest warrant pursuant to article 15.26 of the Code of Criminal Procedure. To the extent the submitted complaints were presented to a magistrate in support of the issuance of an arrest warrant, they must also be released pursuant to article 15.26. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 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

³As we are able to resolve this under section 58.007, we do not address your other arguments for exception of this information.

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/vh

Ref: ID# 264596

Enc. Submitted documents

c: Ms. Katie Humphrey
Austin American-Statesman
Williamson County Bureau
203 East Main Street
Round Rock, Texas 78664
(w/o enclosures)