



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2006

Ms. Sandy Dudley
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR2006-11561

Dear Ms. Dudley:

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# 264849.

The City of Cleburne (the "city") received a request for three specified offense reports. You state that some of the requested information has been released and claim that the submitted 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.

Initially, we note that you did not submit information responsive to the portion of the request for offense report number 264592. We assume the city has released this report to the requestor. If it has not, it must do so at this time to the extent that such report exists. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances). We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information.

Next, we note that the submitted information includes documents entitled "Affidavit Submitted for Probable Cause Determination Regarding a Juvenile." Article 15.26 of the Code of Criminal Procedure states that "[t]he 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." Therefore, an arrest warrant and supporting affidavit are made public under article 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, to the extent the probable cause affidavits in the submitted information were presented to a magistrate in support of the issuance of an arrest warrant, they must be released. If the probable cause affidavits were not presented to a magistrate in support of an arrest warrant, we consider them together with the remaining 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." Gov't Code § 552.101. 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) provides as follows:

(c) 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). Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2)(A). The submitted information involves juvenile suspects and concerns conduct that occurred after September 1, 1997. Accordingly, the city must withhold the submitted information from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

To summarize, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; however, if the probable cause affidavits were presented to a magistrate in support of the issuance of an arrest warrant, they must be released in accordance with article 15.26 of the Code of Criminal Procedure. As our ruling is dispositive, we do not address your section 552.108 claim.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/vh2

Ref: ID# 264849

Enc. Submitted documents

c: Mr. Wesley Whitsell
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Cleburne, Texas 76031
(w/o enclosures)