ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2003

Mr. Rene B. Gonzalez
Denton, Navarro, Rocha & Bernal, P.C.
222 East Van Buren, Suite 405
Harlingen, Texas 78550-6804

OR2003-7038

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188877.

The City of Progreso (the "city"), which you represent, received a request for information relating to case number 03-360. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes an arrest warrant. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

> 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

[1]Although you also raise section 552.108 of the Government Code in your letter to this office of July 29, 2003, we note that you have not submitted any comments explaining the applicability of section 552.108 to the information at issue in your subsequent submission of August 6, 2003. *See* Gov't Code § 552.301(e)(1)(A) (governmental body seeking to withhold information pursuant to exception in chapter 552 must submit written comments stating reasons why stated exception applies). Accordingly, we presume that the city no longer intends to claim section 552.108 as an exception to disclosure and find that this claim is waived. *See* Gov't Code §§ 552.301, .302. Thus, we do not address section 552.108 in this ruling.

> 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.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, 2003 Tex. Sess. Law Serv. 1631 (to be codified as amendment to Crim. Proc. Code art. 15.26). This provision makes the submitted arrest warrant public. The exceptions found in the Public Information Act do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the city must release the arrest warrant, which we have marked, to the requestor.

We also note that the submitted information includes a complaint. 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); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.–Corpus Christi1990, pet. ref'd); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.–Houston [14 Dist.] 1996, pet. ref'd) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). The complaint at issue here indicates on its face that it was presented to the magistrate to support the issuance of this arrest warrant. We therefore determine that the complaint in the submitted information, which we have marked, is made public by article 15.26 and must be released.

We next address the remainder of the submitted 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."[2] 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

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[2]The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

> (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.

The information at issue was used or developed in an investigation of an alleged assault committed against a child. Thus, we find that the 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 that no such regulation exists. Given that assumption, the remainder of the submitted 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 remainder of the submitted information from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law. As we are able to make this determination, we do not reach your claim under section 552.103 of the Government Code.

In summary, the city must release the marked arrest warrant and complaint to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. The remainder of the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within 10 calendar days of this ruling, 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 188877

Enc: Submitted documents

c: Mr. Silvestre Moreno, Jr.
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Mercedes, Texas 78570
(w/o enclosures)