



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2003

Ms. Denise Obinegbo  
Open Records Specialist  
Richardson Police Department  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2003-8279

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191206.

The Richardson Police Department (the "department") received a request for information relating to a specified call for service. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.<sup>1</sup>

We first note that the submitted information includes two arrest warrants and the supporting affidavits for the warrants. 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 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.

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<sup>1</sup>We note that portions of the submitted documents have been redacted. This office cannot review redacted information. In the future, you must submit information in a form that permits this office to determine whether it is encompassed by an exception to disclosure. See Gov't Code § 552.301(e)(1)(D).

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, 2003 Tex. Sess. Laws Serv. 1631 (to be codified as amendment to Crim. Proc. Code art. 15.26) (emphasis added). Thus, the submitted arrest warrants and the supporting affidavits for the warrants are made public and must be released under article 15.26 of the Code of Criminal Procedure. As a general rule, the exceptions to disclosure found in chapter 552 of the Government Code 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, the arrest warrants and affidavits that we have marked must be released to the requestor under article 15.26 of the Code of Criminal Procedure.

Next, we address section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. Chapter 261 of the Family Code is applicable to information that relates to reports or investigations of alleged or suspected child abuse or neglect. Section 261.201 of the Family Code provides in part:

(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, audiotapes, videotapes, 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). We find that the rest of the submitted information relates to an investigation made under chapter 261 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). You do not inform this office of any rule adopted by the department that would allow the release of the information in question in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that the department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.

In summary, the department must release the marked arrest warrants and supporting affidavits under article 15.26 of the Code of Criminal Procedure. The department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we are able to make these determinations, we need not address your claims under sections 552.108 and 552.130.

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).

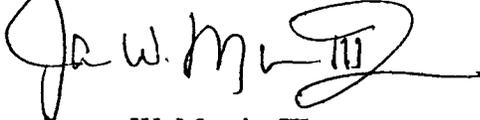
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 191206

Enc: Submitted documents

c: Mr. David Kenney  
14414 Cyprus Point  
Dallas, Texas 75234  
(w/o enclosures)