



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2004

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2004-0151

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193956.

The Glenn Heights Police Department (the "department"), which you represent, received a request for records regarding a specified address for a specified period of time. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.¹

Initially, we note that the submitted information includes an arrest warrant and supporting affidavit. 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 We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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, Tex. Sess. Laws Serv. 1631 (Vernon) (to be codified as amendment to Crim. Proc. Code art. 15.26). Thus, article 15.26 of the Code of Criminal Procedure makes an arrest warrant and an arrest warrant affidavit presented to the magistrate in support of the issuance of the warrant public. 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). Accordingly, we conclude that the department must release to the requestor the arrest warrant and supporting affidavit that we have marked in their entirety.

You claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.² Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 states in pertinent part:

(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). Portions of the remaining submitted information, which we have marked, concern law enforcement records and files pertaining to juvenile conduct that

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

occurred after September 1, 1997.³ It appears that none of the exceptions in section 58.007 apply to this particular marked information. Accordingly, we conclude that the department must withhold this marked information pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. However, because no portion of the remaining submitted information identifies a juvenile offender, the department may not withhold any other portion of the remaining submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You also claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 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). Portions of the remaining submitted information, which we have marked, concern a report of alleged or suspected abuse made under chapter 261 and working papers used or developed in an investigation under chapter 261 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. We, therefore, assume that no such regulation exists. Given that assumption, we conclude that the department must withhold this particular marked information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).

³ A "child" is defined in the Family Code as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2)(a).

⁴ Because we base our ruling regarding this particular marked information on section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, we need not address your section 552.108 claim.

In summary, the department must release to the requestor the arrest warrant and supporting affidavit that we have marked in their entirety pursuant to article 15.26 of the Code of Criminal Procedure. The department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code. The department must release the remaining submitted information to the requestor.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/mt

Ref: ID# 193956

Enc. Marked documents

c: Ms. Angie N. N'Duka
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(w/o enclosures)