



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 20, 2004

Ms. Rebecca Brewer  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2004-3184

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200038.

The City of Frisco (the "city"), which you represent, received a request for a specified personnel file, arrest warrant, and report.<sup>1</sup> You represent that the city has released the requested personnel file to the requestor. However, you claim that the remaining requested 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 the submitted information contains arrest warrants and corresponding affidavits that must be released. The Seventy-eighth Legislature amended article 15.26 of the Code of Criminal Procedure, which became effective September 1, 2003. Article 15.26 states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. We have marked the arrest warrants and affidavits that must be released under the amended statute.

In regard to the remaining responsive 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." Section 261.201 of the Family Code reads in part as follows:

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<sup>1</sup>We note that the requestor specifically excludes any identifying information of the victim from the request for information. Therefore, any victim identifying information is non-responsive to the request for information, and we need not address the applicability of the Public Information Act ("Act") to it.

(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.

We conclude that the remaining responsive information consists of reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code. You have not indicated that the Frisco Police Department 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 remaining responsive information is confidential in its entirety pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the city must withhold this information under section 552.101 of the Government Code. Furthermore, because section 261.201(a) protects all “files, reports, communications, and working papers” related to an investigation under chapter 261, the city must not release front page offense report information in cases such as this.

In summary, we conclude that: 1) the arrest warrants and affidavits must be released under article 15.26 of the Code of Criminal Procedure; and 2) the city must withhold the remaining responsive 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 this determination, we need not address your remaining arguments.

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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 200038

Enc: Submitted documents

c: Ms. Jennifer Emily  
The Dallas Morning News  
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(w/o enclosures)