



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2004

Mr. Stephen E. Bristow
District Attorney
90th Judicial District
516 Fourth Street, Room 206
Graham, Texas 76450

OR2004-3386

Dear Mr. Bristow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200293.

The Breckenridge Police Department (the "department") received a request for all criminal information regarding two named individuals. You claim that the requested information, Exhibits 1-4, 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning named individuals. In this case, we believe that each individual's right to privacy has been implicated. Thus, where a named individual is a possible suspect, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.*

We note, however, that Exhibit 3 contains a complaint. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." 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); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14th 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 was presented to and signed by the magistrate in support of the issuance of a warrant; thus, it is made public pursuant to article 15.26 of the Code of Criminal Procedure, and may not be withheld under section 552.101 and the common law privacy concerns expressed in *Reporters Committee*. *See Open Records Decision 525* (1989) (statutory predecessor). Therefore, you must release the complaint to the requestor.

Section 552.101 also encompasses information made confidential under section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The requested documents in Exhibit 1 were used or developed in an investigation of child abuse; therefore, they fall within the scope of section 261.201 of the Family Code. You have not indicated that the 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 requested documents are confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2* (1986) (predecessor statute). Accordingly, the department must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.¹

We note, however, that Exhibit 1 contains an arrest warrant. As we stated above, Article 15.26 of the Code of Criminal Procedure makes an arrest warrant public. Thus, there

¹Because we are able to resolve this under section 552.101, we do not address your other arguments for Exhibit 1.

is a conflict of laws between section 261.201 of the Family Code and article 15.26 of the Code of Criminal Procedure. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex.Crim.App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). We find that the public availability provision in article 15.26 of the Code of Criminal Procedure is more specific than the general confidentiality provision in section 261.201. Thus, article 15.26 more specifically governs the public availability of the submitted arrest warrant and prevails over the more general confidentiality provision in section 261.201. *See Lufkin v. City of Galveston*, 63 Tex. 437 (1885) (when two sections of an act apply, and one is general and the other is specific, then the specific controls); *see also* Gov't Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision). Therefore, the department must release the submitted arrest warrant to the requestor.

You assert that the information in Exhibit 2 is excepted under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense reports relate to pending criminal investigations. However, we note that the information in Exhibit 2 pertains to an allegation of the unauthorized use of a car in 1990, theft in 1978 and 1981, and burglary in 1995. The longest possible statutes of limitations for these offenses are three to five years. *See* Crim. Proc. Code art. 12.01(a)(4) (limitations for theft and burglary are five years), 12.01(a)(6) (providing limitation period of three years for any felony offense not listed in subsections one through five). You have not explained why release of this information would interfere with the investigations of offenses for which the statute of limitations has run. Thus, because you have not shown the applicability of section 552.108(a)(1), we conclude that you may not withhold the information in Exhibit 2.

Finally, you assert that the information in Exhibit 4 is excepted under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. —Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit 4 from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In addition, section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas license plate number found within Exhibit 2, which we have marked. See Gov't Code § 552.130.

To conclude, (1) any information where a named individual is a possible suspect is confidential, and must be withheld under section 552.101 of the Government Code, (2) the information in Exhibit 1, except the arrest warrant, is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code, (3) all but the basic information in the reports within Exhibit 4 is excepted from release under section 552.108(a)(2), and (4) the Texas license plate number in Exhibit 2 is excepted under section 552.130 of the Government Code. The remaining information, including the complaint in Exhibit 3, must be released 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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/JLC/seg

Ref: ID# 200293

Enc. Submitted documents

c: Mr. Ronnie Blasingame
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(w/o enclosures)