

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2004

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2004-5059

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 203900.

The City of Waco (the "city") received a request for the arrest warrant affidavits related to an investigation of a former city police detective. You state that some responsive information will be provided to the requestor. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed 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." 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

(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). Generally, information used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code must be withheld in its entirety under section 261.201.

In this instance, however, the submitted information consists of arrest warrant affidavits. 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.” Thus, there is a conflict of laws between section 261.201 and article 15.26.

However, 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 affidavits 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 city must release the submitted arrest warrant affidavits in their entirety to the requestor.¹

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

¹We note we contacted the city regarding the possible sealing by court order of these records, but to date we have received no indication that any of the records at issue have been sealed. *See generally* Tex. R. Civ. Proc. 76a (procedural mechanism for sealing court records)

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 203900

Enc. Submitted documents

c: Ms. Cindy V. Culp
Waco-Tribune Herald
900 Franklin Avenue
Waco, Texas 76701
(w/o enclosures)

IN THE SUPREME COURT OF TEXAS

.....

No. 06-0545

.....

City of Waco, Texas, Petitioner

v.

Greg Abbott, Attorney General of the State of Texas, Respondent

.....

On Petition for Review from the
Court of Appeals for the Seventh District of Texas

.....

PER CURIAM

Justice Willett did not participate in the decision.

The City of Waco asked the Attorney General whether arrest-warrant affidavits produced pursuant to Texas Code of Criminal Procedure article 15.26 may be redacted as confidential, based on Family Code section 261.201, so that the identities of sexual assault victims remain classified. Tex. Gov't Code § 552.301. The Attorney General issued an opinion concluding that "article 15.26 more specifically governs the public availability of the submitted arrest warrant affidavits and prevails over the more general confidentiality provisions in section 261.201," and directing the City to release the submitted arrest-warrant affidavits in their entirety. Op. Tex. Att'y Gen. No. GA-5059 (2004). The City disagreed with the Attorney General's conclusion and filed a suit for declaratory judgment and writ of mandamus. The State answered, and the parties filed cross motions for summary judgment. The trial court denied the City's motion, granted the State's, and signed a final judgment providing that "arrest warrant affidavits . . . are not

confidential under Family Code § 261.201 because the affidavits do not constitute documents created pursuant to Family Code ch. 261.”

The City appealed, and the court of appeals affirmed the trial court’s judgment. ___ S.W.3d ___. That court held, inter alia, that section 261.201’s restrictions “do not apply to the arrest warrant affidavits at issue here.” *Id.* at ___.

The City petitioned this Court for review, raising six issues: (1) whether arrest-warrant affidavits containing the identity of child sexual assault victims must be released pursuant to article 15.26; (2) whether the court of appeals’ decision circumvents the State’s compelling interest in keeping such identities confidential; (3) whether the court of appeals correctly construed Family Code section 261.201; (4) whether the court of appeals misapplied the Public Information Act when it held that the requested information qualified as court records; (5) whether article 15.26 should be narrowly construed; and (6) whether article 15.26 is more specific than Family Code section 261.201. The City and the State have now jointly moved to dismiss the case as moot and settled, and they also ask that we reverse and vacate the court of appeals’ judgment and opinion. Citing article 57.02(h) of the Code of Criminal Procedure, the parties now agree that “the identities of child victims of sexual assault should be redacted from search-warrant affidavits released to a requestor under the Public Information Act.”

Pursuant to Texas Rule of Appellate Procedure 56.2, the Court grants the petition for review.

Without hearing oral argument or considering the merits, the Court vacates the court of appeals’ judgment and dismisses the case as moot in accordance with the parties’ motion. Tex. R. App. P. 56.2. The Court expresses no opinion either on the correctness of the court of appeals’ opinion or on whether article 57.02 of the Texas Code of Criminal Procedure prohibits the disclosure of the identities of child sexual assault victims in search-warrant affidavits released to a requestor pursuant to the Public Information Act, Texas Government Code chapter 552.

OPINION DELIVERED: December 1, 2006