ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2004

Mr. Chris Settle
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2004-5913

Dear Mr. Settle:

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# 205165.

The Dallas Police Department (the "department") received a request for police reports pertaining to a specified address from September 1, 2003 to May 9, 2004. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.[1] We assume that the department has released all other information that is responsive to this request for information, to the extent that such information existed when the department received this request. If not, then the department must do so at this time.[2] *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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[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.

[2]We note that the Act does not require the department to release information that did not exist when it received this request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. 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). We find that the submitted information was used or developed in an investigation of alleged child abuse. Therefore, the submitted information is generally confidential under section 261.201 of the Family Code and not subject to public release under the Act. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

We note, however, that the submitted records contain an arrest warrant and supporting affidavit. Article 15.26 of the Code of Criminal Procedure provides that "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." When 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 of section 261.201(a). Thus, article 15.26 more specifically governs the public availability of the submitted warrant and affidavit 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 act apply, and one is general and other is specific, then specific controls); *see also* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, the department must release the submitted arrest warrant to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. However, it is unclear whether the arrest warrant affidavit was presented to a magistrate in support of the issuance

of the arrest warrant. As we are unable to make this determination, we must rule in the alternative. If it was so presented, then it must also be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. If not, the affidavit must be withheld under section 261.201 of the Family Code.[3]

To summarize: The department must release the submitted arrest warrant to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. If the arrest warrant affidavit was presented to a magistrate in support of the issuance of the warrant, then it must also be released to the requestor pursuant to article 15.26. If the affidavit was not so presented, it must be withheld under section 261.201 of the Family Code along with the remaining submitted information.

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).

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[3]We note we contacted the department 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)

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/sdk

Ref: ID# 205165

Enc. Submitted documents

c: Ms. Shawana Sanchez
11611 Ferguson Road, office
Dallas, Texas 75228
(w/o enclosures)