



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2005

Ms. Lee Shapleigh
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2005-00945

Dear Ms. Shapleigh:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217833.

The El Paso District Attorney (the “district attorney”) received a request for any records pertaining to the investigation, arrest, incarceration, and prosecution of the requestor’s client. You state that you have released some responsive information to the requestor. However, you claim that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.103, 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 includes complaints. 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” (emphasis added). 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); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref’d); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref’d) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). In this instance, we are unable to determine whether any of the complaints that we have marked were presented to a magistrate in support of the issuance of an arrest warrant. If any of the marked complaints were so presented, then any such complaint must be released under article 15.26 of the Code of Criminal Procedure. To

the extent that the marked complaints were not so presented, they must be disposed of in accordance with the rest of this ruling.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by statute. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(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). The submitted information indicates that one of the suspects is a juvenile. Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Open Records Decision No. 644 (1996). Upon review, we find that the submitted information involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Therefore, most of the submitted information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We note, however, that the submitted information includes fingerprints of the requestor's client. The public availability of this information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. These sections provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

(1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001, 560.002, 560.003. These sections are intended to protect the privacy of a living individual to whom a fingerprint or other biometric identifier pertains. *See id.* § 560.002(1)(a). In this instance, the requestor identifies himself as an attorney for the individual to whom the submitted fingerprints pertain. Consequently, we find that the requestor has a right of access to the submitted fingerprints under section 560.002(1)(a) of the Government Code.

Generally, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 must be withheld in its entirety under section 58.007 of the Family Code. Thus, in this instance, there is a conflict of laws between section 58.007 and section 560.002 of the Government Code. 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 of section 560.002 of the Government Code is more specific than the general confidentiality provision in section 58.007 of the Family Code. Thus, section 560.002 more specifically governs the public availability of the submitted fingerprints and prevails over the more general confidentiality provisions of section 58.007. *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 §§ 311.025(a) (if statutes enacted at same or different sessions of legislature are irreconcilable, statute latest in date of enactment prevails), 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, the district attorney must release the fingerprints we have marked to the requestor under section 560.002 of the Government Code.

In summary, if any of the complaints that we have marked were presented to a magistrate in support of the issuance of an arrest warrant, then any such complaint must be released under article 15.26 of the Code of Criminal Procedure. The marked fingerprints must be released to the requestor under section 560.002 of the Government Code. The district attorney must withhold the remaining submitted information, including the complaints if not presented to a magistrate, under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As our ruling is dispositive, we do not address your other 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 217833

Enc. Submitted documents

c: Mr. Robert E. Riojas
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(w/o enclosures)