



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2005

Mr. Ron G. MacFarlane, Jr.
Bryan Tower, Suite 2050
2001 Bryan Street
Dallas, Texas 75201

OR2005-02348

Dear Mr. MacFarlane:

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# 220372.

The Cedar Hill Police Department (the "department"), which you represent, received a request for information relating to a specified arrest, including the warrant, probable cause affidavit, and arrest report. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that the submitted information includes an arrest warrant and the supporting affidavit for the warrant. As amended by the 78th Legislature, article 15.26 of the Code of Criminal Procedure provides:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is *public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26 (emphasis added). Thus, the submitted arrest warrant and the affidavit for the warrant are made public by article 15.26 of the Code of Criminal Procedure. As a general rule, the exceptions to disclosure found in the Act do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the arrest warrant and affidavit that we have marked must be released to the requestor under article 15.26 of the Code of Criminal Procedure.

Next, we address section 552.101 of the Government Code. This section excepts from public 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 other statutes make confidential. Chapter 261 of the Family Code is applicable to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 of the Family Code 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because the rest of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, the information falls within the scope of section 261.201 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). You do not inform this office of any rule adopted by the department that would permit the release of the submitted information in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that the department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.

In summary: (1) the department must release the arrest warrant and the affidavit for the warrant under article 15.26 of the Code of Criminal Procedure; and (2) the department must withhold the rest of the submitted 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 arguments under section 552.101.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

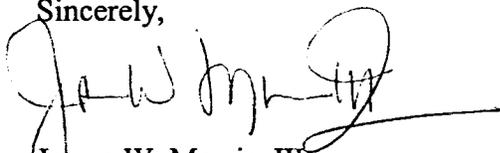
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 220372

Enc: Submitted documents

c: Mr. Anthony R. Morrison
c/o Mr. Ron G. McFarlane, Jr.
2001 Bryan Street, Suite 2050
Dallas, Texas 75201
(w/o enclosures)