



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2005

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2005-05150

Dear Ms. Hampton:

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# 225955.

The Bryan Police Department (the "department") received a request for information related to a specified offense from the Texas Department of State Health Services (the "DSHS"). 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 reviewed the submitted information.

Initially, we note that the submitted information includes an arrest warrant affidavit. The release of this information is governed by article 15.26 of the Code of Criminal Procedure, which 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.

Code Crim. Proc. art. 15.26 (emphasis added). The submitted arrest warrant affidavit is made public by this provision. The exceptions found in the Act do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the department must release the submitted arrest warrant affidavit.

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. Section 552.101 encompasses information protected by other statutes. 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, 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). Based on our review of your arguments and the information at issue, we agree that the remaining submitted information constitutes files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Therefore, the remaining submitted information is generally confidential and not subject to public release under the Act. *See id.* However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.*

We note that chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.110 of the Government Code specifically grants a right of access for the DSHS to obtain criminal history record information (“CHRI”) from the Department of Public Safety (“DPS”). Section 411.110 provides:

(a) The [DHS] is entitled to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to a person who is:

(1) an applicant for a license or certificate under the Emergency Medical Services Act (Chapter 773, Health and Safety Code);

(2) an owner or manager of an applicant for an emergency medical services provider license under that Act; or

(3) the holder of a license or certificate under that Act.

Gov't Code § 411.110(a). Furthermore, pursuant to section 411.087 of the Government Code, an agency which is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history information maintained by that [agency]." Gov't Code § 411.087(a)(2); *see also* 25 T.A.C. § 157.37. CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2).

In this instance, the requestor identifies himself as an investigator with the DSHS and states that he is investigating the nature and seriousness of an alleged crime as it relates to EMS personnel certification. The requestor specifically seeks "copies of the offense and/or incident/police reports, [and] arrest warrant affidavit" regarding a specified offense for which the named individual has been arrested. Accordingly, we conclude that sections 411.087 and 411.110 of the Government Code allow the DSHS a statutory right of access to a portion of the submitted information, but only for purposes consistent with the Family Code. *See* Gov't Code § 411.082(2); *see also* Fam. Code § 261.201(a). Upon review, we are unable to determine whether the DSHS intends to use the criminal history record information for purposes consistent with the Family Code. Consequently, if the department determines that the DSHS intends to use the criminal history record information for purposes consistent with the Family Code, we conclude that the department must make available to the DSHS the information from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the department must withhold the remainder of the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, if the department determines that the DSHS does not intend to use the criminal history record information for purposes consistent with the Family Code, the department must withhold the submitted information from disclosure in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute); Fam. Code §§ 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

In summary, the department must release the submitted arrest warrant affidavit pursuant to article 15.26 of the Code of Criminal Procedure. If the department determines that the DSHS intends to use the criminal history record information for purposes consistent with the Family Code, the department must release information showing the type of allegation made, whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions to this requestor pursuant to sections 411.087 and 411.110 of the Government Code. In that instance, the remaining submitted information must be withheld pursuant to section 261.201 of the Family Code. If the department determines that the DSHS does not intend to use the criminal history record information for purposes consistent with the Family Code, with the exception of the submitted arrest warrant affidavit, the department must withhold the submitted information from disclosure in its entirety pursuant to section 261.201(a) of the Family Code.

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 225955

Enc. Submitted documents

c: Mr. Kenneth R. Himes, II
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756
(w/o enclosures)