



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 25, 2005

Mr. Leona Clay
Administrative Assistant
Harker Heights Police Department
120 South Harley Drive
Harker Heights, Texas 76548

OR2005-07708

Dear Ms. Clay:

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# 231033.

The Harker Heights Police Department (the "department") received a request for information related to the arrest of a named individual for aggravated sexual assault. 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 information.

Initially, we note the submitted information includes an arrest warrant, an affidavit for arrest signed by a magistrate, and a complaint. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. Article 15.04 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." Crim. Proc. Code art. 15.04. 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). Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.*, Open Records Decision Nos. 544

(1990), 378 (1983), 161 (1977), 146 (1976). Therefore, the submitted arrest warrant and affidavit for arrest, which we have marked, must be released. To the extent the marked complaint was presented to a magistrate in support of the issuance of an arrest warrant, it is public under article 15.26 of the Code of Criminal Procedure and must be released in its entirety. To the extent this complaint was not presented to a magistrate, we will address it together with the other submitted information.

You claim the remaining submitted information is excepted from disclosure under section 552.101 of the Government Code. This section excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information made confidential 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, 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 remaining submitted information relates to a report of alleged child abuse. *See* Fam. Code § 261.001 (defining “abuse” for purposes of Family Code, ch. 261); *see also* Fam. Code § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, this information is within the scope of section 261.201 of the Family Code.

Section 261.201 states, however, that this information may be disclosed for purposes consistent with the Family Code and other applicable law. *See* Fam. Code § 261.201(a). You have not indicated that any applicable federal or state law, or department rule, governs the release of this type of information. The requestor, an agency of another state, indicates the information at issue is subject to the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Program (the “Jacob Wetterling Act”) which provides that “[t]he information collected under a State [sex offender] registration program may be disclosed for any purpose permitted under the laws of the State.” 42 U.S.C. § 14071(e)(1). However, upon review of the Jacob Wetterling Act, we can find no release provision applicable to the information at issue. If the requestor informs the department of an

applicable federal law that provides access to the information at issue consistent with the Family Code, the department must release this information in accordance with that access provision. If the requestor does not inform the department of such a provision, the department must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, the submitted arrest warrant and affidavit for arrest must be released pursuant to article 15.26 of the Code of Criminal Procedure. To the extent the submitted complaint was presented to a magistrate, it must be also be released pursuant to article 15.26. To the extent the submitted complaint was not so presented, the complaint must be disposed of with the remaining submitted information. If the requestor informs the department of a federal law that allows it access to the remaining submitted information, the department must release the information in accordance with that law. To the extent the requestor does not so inform the department, the remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 231033

Enc. Submitted documents

c: Mr. Ollie Urquehart
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(w/o enclosures)