



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2005

Mr. Galen Gatten
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2005-10237

Dear Mr. Gatten:

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# 236352.

The Midland Police Department (the "department") received a request for a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes an arrest warrant, probable cause affidavit, 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 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." 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). The exceptions found in the Act generally do not apply to information that is made public by other statutes. *See* Open Records Division No. 525 (1989) (statutory predecessor). Accordingly, the submitted arrest warrant must be

released pursuant to article 15.26. To the extent that the submitted probable cause affidavit and complaint were presented to the magistrate in support of issuance of an arrest warrant, the department must release them pursuant to article 15.26. To the extent that they were not so presented, they are not made public by article 15.26 and must be disposed of in accordance with the remainder 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 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). Because the remaining information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, this information is within the scope of section 261.201 of the Family Code. You state that the department has not adopted a rule that governs the release of this type of information. However, section 261.201 also provides that information encompassed by subsection (a) may be released to certain persons and entities under limited circumstances. *See* Fam. Code § 261.201.

Generally, a governmental body such as the department may transfer information to another governmental body subject to the Act without violating the confidentiality of the information or waiving exceptions to disclosure. *See* Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Open Records Decision No. 661 at 3 (1991). However, where a confidentiality statute such as chapter 261 of the Family Code enumerates specific entities to which the release of confidential information is authorized and where the potential receiving governmental body is not among the statute's enumerated entities, the interagency transfer of that information is prohibited. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited), JM-590 at 4-5 (1986) (same); *see also* Open Records Decision Nos. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). We note that the department received the request for information from Court Appointed Special Advocates

("CASA"). The requestor does not fall within any category of persons or entities under section 261.201 that are authorized to receive this ordinarily confidential information. *See* Fam. Code § 261.201(b)-(g) (listing entities that are authorized to receive 261.201 information). Accordingly, the remaining information is confidential under section 261.201, and must be withheld in its entirety under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, the submitted arrest warrant must be released pursuant to article 15.26 of the Code of Criminal Procedure. If the submitted probable cause affidavit and complaint were presented to a magistrate in support of the issuance of an arrest warrant, they must also be released pursuant to article 15.26 of the Code of Criminal Procedure. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

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).

¹We note that if the investigation has been referred to the Department of Family and Protective Services (the "DFPS"), a parent or other legal representative of a child who is a requestor may be entitled to access to the DFPS's records. Section 261.201(g) of the Family Code provides that the DFPS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Fam. Code § 261.201(g).

²As our ruling is dispositive, we need not address your remaining claims against disclosure.

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); *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 Office of the Attorney General 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. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 236352

Enc. Submitted documents

c: Ms. Valyn Mendoza
5214 Sherwood Drive
Midland, Texas 79707
(w/o enclosures)