



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2005

Ms. Julie Joe
Assistant County Attorney
Travis County
Transactions Division
P. O. Box 1748
Austin, Texas 78767

OR2005-10597

Dear Ms. Joe:

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# 240237.

The Travis County District Attorney's Office (the "district attorney") received a request for information pertaining to a named individual and specified cause number. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, 552.1325, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

As a preliminary matter, we note that the submitted records include two arrest warrant affidavits. Article 15.26 of the Code of Criminal Procedure states that "[t]he 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." Therefore, these documents are made public under article 15.26. Exceptions to disclosure under the Act generally do not apply to information that is made public by other statutes, such as article 15.26 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Thus, if the arrest warrant affidavits were presented to a magistrate in support of the issuance of an arrest warrant, they are public and must be released to the requestor.

We next address your claim 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” and encompasses information that another statute makes confidential. Gov’t Code § 552.101. 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 [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, audiotapes, videotapes, 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). The information at issue was used or developed in an investigation of alleged indecency with a child. Thus, we find that the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E). You have not indicated that the district attorney has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that this information is confidential under section 261.201 of the Family Code and must therefore be withheld under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

In summary, if the arrest warrant affidavits were presented to a magistrate in support of the issuance of an arrest warrant, they are public under article 15.26 of the Code of Criminal Procedure and must be released to the requestor. Otherwise, the information at issue is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code on that basis. Because we reach these conclusions, we need not address your remaining arguments against disclosure.

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 ten 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); *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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 240237

Enc. Submitted documents

c: Mr. Kent Hoffman
Locke, Liddell & Sapp, L.L.P.
100 Congress Avenue, Suite 300
Austin, Texas 78701-4042
(w/o enclosures)