



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 28, 2005

Mr. J. Andrew Bench  
Attorney at Law  
P.O. Box 1353  
Greenville, Texas 75403-1353

OR2005-10639

Dear Mr. Bench:

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# 236901.

The Greenville Police Department (the "department"), which you represent, received a request for information relating to all current charges against a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We initially note that the submitted information includes an arrest warrant and a complaint. Article 15.26 of the Code of Criminal Procedure provides that "[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. 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). The arrest warrant that we have marked was presented to a magistrate and must be released under article 15.26 of the Code of Criminal Procedure. Likewise, the complaint that we have marked appears to have been

presented to the magistrate in support of the issuance of the arrest warrant. Therefore, the complaint must also be released under article 15.26 of the Code of Criminal Procedure.<sup>1</sup>

Next, we address section 552.101 of the Government Code.<sup>2</sup> 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 exception encompasses information that another statute makes confidential. 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 [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(a). You do not indicate that the department has adopted a rule that governs the release of this type of information. 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.<sup>3</sup> *See* Open Records

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<sup>1</sup>We note that this office contacted the department regarding the possible sealing by court order of the arrest warrant and the complaint, but to date we have received no indication that any of the records at issue have been sealed. *See generally* Tex. R. Civ. Proc. 76a (procedural mechanism for sealing court records).

<sup>2</sup>Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

<sup>3</sup>We note that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child’s parent(s) may have the statutory right to review the file. *See* Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 (reference in law to Department of Protective and Regulatory Service means Department of Family and Protective Services).

Decision No. 440 at 2 (1986) (addressing predecessor statute). Furthermore, because section 261.201(a) protects all files, reports, records, communications, and working papers that are related to an investigation of alleged or suspected child abuse or neglect, the department must not release front page offense report information in such cases.

In summary: (1) the department must release the arrest warrant and the complaint 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.<sup>4</sup>

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); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

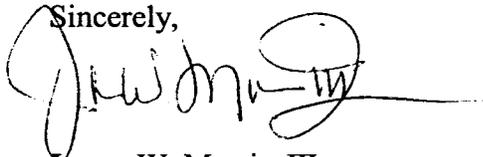
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<sup>4</sup>As we are able to make this determination, we do not address your claim under section 552.108 of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'James 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# 236901

Enc: Submitted documents

c: Mr. Richard Ouer  
c/o Mr. J. Andrew Bench  
P.O. Box 1353  
Greenville, Texas 75403-1353  
(w/o enclosures)