



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 28, 2005

Mr. Michael Mondville  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2005-11629

Dear Mr. Mondville:

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# 238933.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the requestor's parole. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information includes an arrest warrant. Article 15.26 of the Code of Criminal Procedure 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). This provision makes the submitted arrest warrant expressly public. 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).

However, you claim that the submitted arrest warrant is confidential under section 508.313 of the Government Code. Generally, information is confidential pursuant to section 508.313 if it was obtained and maintained by the department and it relates to “an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency.” *See* Gov’t Code § 508.313. Thus, in this instance, there would be a conflict of laws between section 508.313 and article 15.26. However, where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, article 15.26 is more specific than the general confidentiality provision in section 508.313. *See also* Gov’t Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, the submitted arrest warrant is public under article 15.26 of the Code of Criminal Procedure and must be released in its entirety.

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. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Therefore, any CHRI obtained from DPS or any other criminal justice agency in the information at issue

must be withheld under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code.

Section 552.101 also encompasses information protected by section 508.313 of the Government Code. Section 508.313(a)(1) provides that all information obtained and maintained by the department is confidential and privileged if the information relates to “an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency.” Gov’t Code § 508.313(a)(1). You indicate that a portion of the submitted information consists of records from the requestor’s parole file, and that the requestor is a former inmate of the institutional division subject to release on parole.

Based on your representations and our review of the submitted parole records, we find that the remaining information you have marked is confidential pursuant to section 508.313. Further, the requestor is not an entity authorized to obtain this particular information under section 508.313(c). Accordingly, we conclude that the department must withhold the remaining information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

In summary, the submitted arrest warrant must be released in accordance with article 15.26 of the Code of Criminal Procedure. Any CHRI obtained from DPS or any other criminal justice agency in the information at issue must be withheld under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code. The remaining information in the submitted parole file is confidential under section 508.313 of the Government Code and must be withheld under section 552.101. As our ruling on this issue is dispositive, we need not address your remaining argument.

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).

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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/sdk

Ref: ID# 238933

Enc. Submitted documents

c: Mr. Arnold Macias  
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(w/o enclosures)