



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

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Ms. Lisa A. Wyatt  
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Assistant County Attorney  
Johnson County Attorney's Office  
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OR2006-00165

Dear Ms. Wyatt and Mr. Simpson:

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# 239910.

The Johnson County District Attorney's Office (the "district attorney") and the Johnson County Sheriff's Office (the "sheriff") received separate requests from the same requestor for information relating to the same specified case. The district attorney and the sheriff have submitted information that they claim is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.114, and 552.130 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and have reviewed the submitted information.

The district attorney also informs us that responsive information held by the sheriff is the subject of Open Records Letter No. 2003-8911 (2003). This office is not aware of any change in the law, facts, or circumstances on which our prior ruling was based. Therefore,

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<sup>1</sup>We note that the district attorney and the sheriff also raise sections 552.001, 552.023, and 552.307 of the Government Code. These sections are not exceptions to public disclosure.

to the extent that the prior ruling encompasses information that is responsive to the present request to the sheriff, the sheriff must dispose of any such information in accordance with Open Records Letter No. 2003-8911. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

We note that the submitted documents include an arrest warrant, the affidavit for the warrant, and a complaint. Article 15.26 of the Code of Criminal Procedure provides that “[an] 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 (emphasis added). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). 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” (emphasis added.). 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).

In this instance, the submitted affidavit for the arrest warrant was presented to the magistrate who issued the warrant. We therefore agree that the arrest warrant and the affidavit for the warrant must be released under article 15.26 of the Code of Criminal Procedure. It is not clear, however, whether the complaint was presented to a magistrate in support of the issuance of an arrest warrant. Accordingly, we must rule in the alternative. Thus, if the complaint that we have marked was in fact “presented to the magistrate in support of the issuance of the warrant,” then it also is made public by article 15.26 of the Code of Criminal Procedure and must be released. If the complaint was not so presented, then it is not made public by article 15.26 and must be disposed of along with the rest of the submitted information.

Next, we address section 552.101 of the Government Code. Section 552.101 excepts from public 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 other statutes make confidential. Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in

Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked the submitted information that is confidential under the MPA. That information may only be released in accordance with the MPA. *See* Open Records Decision No. 598 (1991).

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code. Section 611.002 provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). We have marked information that is confidential under section 611.002 of the Health and Safety Code. Unless the requestor has a right of access to that information under sections 611.004 and 611.0045, the information must be withheld under section 552.101 of the Government Code.

The district attorney and the sheriff also raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) 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 either the district attorney or the sheriff has adopted any rule that governs the release of this type of information. We therefore assume that no such regulation exists. Given that assumption, we conclude that the rest of the submitted information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

In summary: (1) the sheriff must dispose of any responsive information held by his office that is encompassed by Open Records Letter No. 2003-8911 in accordance with the prior ruling; (2) the arrest warrant and the affidavit for the warrant must be released under article 15.26 of the Code of Criminal Procedure; (3) the complaint also must be released under article 15.26 if it was presented to a magistrate in support of the issuance of an arrest warrant; (4) the medical records are confidential under, and may only be released in accordance with, the MPA; (5) the information that is confidential under section 611.002 of the Health and Safety Code must be withheld under section 552.101 of the Government Code unless the requestor has a right of access to the information under sections 611.004 and 611.0045 of the Health and Safety Code; and (6) the rest of the submitted information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we are able to make these determinations, we do not address the other claimed exceptions.

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.

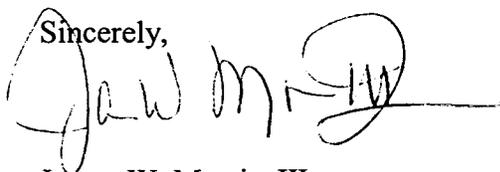
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,  


James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 239910

Enc: Submitted documents

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(w/o enclosures)