ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2006

Ms. Katherine M. Powers
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2006-11502

Dear Ms. Powers:

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# 261236.

The Dallas Police Department (the "department") received a request for information pertaining to specified case numbers. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes an arrest warrant and an arrest warrant affidavit. 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. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Nevertheless, you claim that the arrest warrant and affidavit are confidential under section 261.201 of the Family Code. Generally, all information subject to section 261.201 is confidential. *See* Fam. Code § 261.201. However, information made public by article 15.26 of the Code of Criminal Procedure is not made confidential by section 261.201. *See City of Waco v. Abbott*, No. 07-05-0067-CV, 2006 WL 1490540, at *3 (Tex.App.—Amarillo, May 31, 2006, no. pet. h.) (holding that arrest warrant affidavits filed in child abuse and neglect cases, made by peace officers, and signed before and presented to a magistrate for the purpose of supporting the issuance of an arrest warrant, are not confidential under section 261.201 of the Family Code). Therefore, the submitted arrest

warrant and arrest warrant affidavit must be released without redactions under article 15.26 of the Code of Criminal Procedure.

Next, we address your arguments as to the remaining information. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses section 261.201(a) of the Family Code, which provides as follows:

> 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). You state that the remaining information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on your representations and our review, we find that the remaining information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the remaining information is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, the submitted arrest warrant and arrest warrant affidavit must be released to the requestor 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.

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 A. Person III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 261236

Enc. Submitted documents

c: Mr. James Weldon Smith Jr.
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(w/o enclosures)