



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 8, 1998

Mr. W. J. Ham  
Staff Attorney  
Texas Youth Commission  
P. O. Box 4260  
Austin, Texas 78765

OR98-1193

Dear Mr. Ham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115075.

The Texas Youth Commission (the "commission") received a request for the audio tape recordings of four named employees' hearings, as well as "permission to review all the transcripts of the . . . termination hearings." In response to the request, you submitted to this office for review the information which you assert is responsive.<sup>1</sup> 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 audio tapes.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides that

(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:

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<sup>1</sup>You contend that the commission "does not routinely transcribe tapes of grievance hearings." We infer that the commission does not have any responsive transcriptions of the audio tapes. The Open Records Act does not require a governmental body to make available information which does not exist nor does it require a governmental body to prepare new information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 (1992), 362 (1983). The commission must, nevertheless, make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975); see Gov't Code § 552.353 (providing penalties for failure to permit access to public information).

- (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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

In your letter to this office, you explain that "the subject matter of these hearings is allegations of child abuse of TYC youth at Crockett State School." Therefore, you assert that the information at issue is made confidential by section 261.201(a) of the Family Code, and is protected from disclosure by section 552.101. Based upon your arguments and review of the audio tapes, we agree that the requested information appears to consist of "files, reports, records, communications, audiotapes, videotapes, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. Family Code §§ 261.001(1)(a)(C), 261.103(1). We believe subsection 261.201(a) is applicable to the requested information. Thus, you must withhold the requested information, which involves allegations of abuse or neglect.

As for the remaining audio tape of one hearing, which you contend section 261.201(a) of the Family Code is not implicated, you state that the commission will release the information once the requestor provides the commission with a "release" from the employee who is the subject of the hearing. Section 552.102(a) of the Government Code exempts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 (1992).

We note that there is a legitimate public interest in the activities of public employees in the workplace. *See* Open Records Decision No. 444 (1986). Consequently, the information concerning the remaining audio tape is not protected from public disclosure based on the common-law right to privacy. Thus, the commission need not obtain a release and may not withhold this information from public disclosure based on section 552.101 or section 552.102.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned below the closing "Yours very truly,".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 115075

Enclosures: Submitted audio tapes

cc: Mr. Karim Shabazz  
CWA/TSEU  
Texas State Employees Union  
5412 Maple Avenue, #212  
Dallas, Texas 75235  
(w/o enclosures)