



March 12, 2002

Ms. Pamela Meyer
Assistant District Attorney
Civil Section
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2002-1186

Dear Ms. Meyer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159700.

The Dallas County Juvenile Department (the "county") received two requests for information relating to an incident in which a named resident of a juvenile facility was injured, information related to violations of county policy or state law committed by the facility in 2001, certain requests made under the Public Information Act related to the facility, and documentation that the county informed the facility that reprisals against employees for testifying or reporting violations are illegal. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We note that you have not submitted information responsive to the portions of the request seeking information on any fines or charges against the facility for certain violations, the county's letter informing the Texas Commission on Alcohol and Drug Abuse of violations committed by the facility and of the injury to the former resident of the facility, the specified requests under the Public Information Act, or information advising the facility on actions against employees. We assume that the department has released this information to the extent that it exists. If you have not, you must do so at this time. *See Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000).* We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," which includes information made confidential by other statutes. 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 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.

Chapter 261 of the Family Code provides for the investigation of the abuse or neglect of a child. The submitted report relates to an investigation under chapter 261 of the Family Code. *See* Fam. Code § 261.103(a)(3) (Texas Juvenile Probation Commission is state agency that operates, licenses, certifies, or registers county juvenile department). The victim of the alleged assault in the report was a child for purposes of chapter 261. *See* Fam. Code § 101.003(a) (“child” is generally defined as “a 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”). You have not cited any rule that the investigating agency has adopted that governs the release of this type of information. Therefore, we assume that no such regulation exists. We therefore conclude that the county must withhold the submitted incident report in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also contend that the submitted treatment and intervention record is excepted under section 58.007(b) of the Family Code. Section 58.007 of the Family Code, regarding juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, provides in relevant part as follows:

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or the work of the court.

Furthermore, for purposes of section 58.007, a "child" is a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Fam. Code § 51.02(1). You advise that the treatment and intervention record is maintained by a juvenile probation department. The related report reflects that the individual who was the subject of the report was sixteen at the time of the incident. You represent that the requestor is not an individual who may access the record under section 58.007(b). Therefore, we find that the treatment and intervention record is confidential pursuant to section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code, and must be withheld.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,


Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 159700

Enc. Submitted documents

c: Mr. Harold Cornish
601 Nora Lane
DeSoto, Texas 75115
(w/o enclosures)