



April 18, 2002

Mr. David Wofford  
Staff Attorney  
Texas Youth Commission  
P.O. Box 4260  
Austin, Texas 78765

OR2002-1965

Dear Mr. Wofford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161457.

The Texas Youth Commission (the "commission") received a request for suicide reports made by investigating officers in 2001, and statistics on the number of attempted and successful suicides in the area. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We note that your request for a decision does not address the portion of the request seeking statistical information. We assume that the commission 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 have reviewed the submitted representative sample of information.<sup>1</sup>

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:

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<sup>1</sup>We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- (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. You represent that, when investigating an attempted or successful suicide of a youth in the commission's custody, the commission investigates under section 261.201 of the Family Code because such an act is possibly the result of improper care or neglect of a child by the commission. The individual who is the subject of the submitted 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"). Furthermore, the commission is an agency authorized to conduct investigations under section 261.201. *See* Fam. Code §§ 261.103(b), 261.105(c).

Based on your representation, we conclude that the submitted information relates to an investigation under chapter 261 of the Family Code. We note that the commission has adopted rules concerning investigations of alleged abuse or neglect. *See* Gov't Code § 261.401 (requiring state agency that operates, licenses, certifies, or registers facility in which children are located to (1) investigate reports of neglect or abuse and (2) adopt rules, to be approved by the Health and Human Services Commission, for such investigation and resolution), 37 T.A.C. § 93.33. You do not inform us, nor does it appear, that the commission's rules permit disclosure of this information in this instance. Therefore, the commission must withhold the information under section 552.101 of the Government Code.

Finally, you ask this office to issue a previous determination authorizing the commission to withhold similar information in similar cases in the future. We decline to issue such a previous determination at this time. *See* Open Records Decision No. 673 (2001).

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# 161457

Enc. Submitted documents

c: Mr. Mike Halligan  
Executive Director  
Texas Mental Health Consumers  
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(w/o enclosures)