



July 3, 2002

Mr. Howard A. Hickman
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2002-3636

Dear Mr. Hickman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165194.

The Texas Youth Commission (the "TYC") received a request for copies of an investigation regarding alleged staff misconduct at the Evins Regional Juvenile Center. You claim that the requested information is excepted from disclosure under sections 552.023 and 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You raise section 261.201 of the Family Code, which reads in part 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 Section 552.023, which provides a special right of access to confidential information in certain circumstances, is not an exception to disclosure. We accordingly do not address your argument that the submitted information is excepted under this section.

² We assume that the "representative 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We note that TYC has adopted rules concerning investigations of alleged abuse or neglect. *See* Family 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. We also note that the terms “abuse” and “neglect” in section 261.401 are defined differently than they are in section 261.001, although all definitions involve conduct relating to a child. *See* Family Code § 261.401(a) (defining abuse, neglect, and exploitation “notwithstanding Section 261.001”). We note, however, that section 101.003 of the Family Code defines a child or minor to be 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.” Family Code § 101.003(a). At the time of the incident, which the submitted materials show to be January 3, 2002, the youngest individual involved in the investigation was 19 years old, and thus not a child or minor for purposes of sections 261.201 or 261.401 of the Family Code. These sections therefore do not apply to the submitted information.

We note, however, that some of the submitted information is nevertheless private under section 552.101 in conjunction with common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

We believe that the information that identifies the victims of the alleged employee misconduct is highly intimate and embarrassing and of no legitimate public interest. *See id.* Accordingly, you must withhold from public disclosure the information that identifies victims under section 552.101 in conjunction with the common-law right to privacy. We have marked the documents accordingly.

In summary, you may not withhold from disclosure any portion of the information under section 552.101 in conjunction with section 261.201 of the Family Code. You must, however, withhold from disclosure the information we have marked under section 552.101 in conjunction with common-law privacy.

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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 165194

Enc: Submitted documents

c: Ms. Belinda Martinez
c/o Howard A. Hickman
Texas Youth Commission
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(w/o enclosures)