



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 10, 2003

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2003-2409

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179201.

The Texas Youth Commission ("TYC") received a request from the Denton County Criminal District Attorney's Office (the "District Attorney") for information about a named individual. Specifically, the District Attorney asks whether the individual is in the TYC system and if so, what offense he committed and his estimated date of release. You ask whether the requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you ask if TYC may share the requested information with the District Attorney under sections 61.073 of the Human Resources Code and 58.005 of the Family Code. Finally, you inquire about the applicability of the intergovernmental transfer doctrine to this particular request. We have reviewed the information you submitted and we have considered the issues you raise.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in

Industrial Foundation included 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. As TYC generally must withhold the names and identifying information of juvenile offenders under section 552.101 and the doctrine of common-law privacy, we conclude section 552.101 and common-law privacy apply to this request for information. *Cf.* Fam. Code § 58.007.

Next, we address whether TYC may share information, if any, with the District Attorney pursuant to sections 61.073 of the Human Resources Code and 58.005 of the Family Code. Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 61.073 of the Human Resources Code. This provision states the following:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records are not public and are available only according to the provisions of Section 58.005, Family Code, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 61.073. After reviewing the submitted information, we conclude that it is not the type of information contemplated by section 61.073 of the Human Resources Code. As section 61.073 does not apply, we need not address the availability of this information under section 61.093(c) of the Human Resources Code or chapter 61 of the Code of Criminal Procedure.

Section 58.005 of the Family Code provides as follows:

(a) Information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) a governmental agency if the disclosure is required or authorized by law;

(5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(6) the Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or

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

Fam. Code § 58.005(a). Neither you explain, nor can we ascertain from our review of the submitted information, how the submitted information constitutes information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court. *See* Fam. Code § 58.005(a). Consequently, we cannot conclude the submitted information is the type of information contemplated by section 58.005 of the Family Code.

Lastly, we consider the applicability of the intergovernmental transfer doctrine to this request for information. We ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a question under the Public Information Act (the "Act") as the Act is concerned with the required release of information to the public. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). In this case, TYC received a request for information from another governmental body, the District Attorney. TYC asks whether it

may share the information with the District Attorney. As the name and identifying information of the individual at issue is confidential under section 552.101 and common-law privacy rather than a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized, TYC has the discretion to release the requested information to the District Attorney under the intergovernmental transfer doctrine.

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 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 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 179201

Enc: Submitted documents

c: Mr. John Magee
District Attorney Investigator
Denton County
P.O. Box 2344
Denton, Texas 76202
(w/o enclosures)