



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 20, 2003

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

OR2003-8362

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# 191373.

The Texas Youth Commission (the "commission") received a request from an individual employed with the Tarrant County District Attorney's Office (the "district attorney") for all records pertaining to a named individual. You indicate that some responsive information has been or will be released to the requestor. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the submitted representative sample of information.<sup>1</sup>

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 types of information considered intimate and embarrassing by the Texas Supreme Court in

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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.

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

However, you claim that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 61.073 of the Human Resources Code. Section 552.101 also encompasses information protected by other statutes. You contend that the information at issue is confidential under section 61.073 of the Human Resources Code, which provides:

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.<sup>2</sup> Upon review of 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 is inapplicable, 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.

Furthermore, section 58.005 of the Family Code provides:

(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:

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<sup>2</sup> As you point out, section 61.073 was amended by the 78th Legislature. Section 62 of the amending legislation provides that the amended version of section 61.073 was effective on September 1, 2003, but further provides that conduct that occurred prior to that date is governed by the prior law, which is continued in effect for that purpose. *See* Act of June 2, 2003, 78<sup>th</sup> Leg., R.S., ch. 283, §§ 62(a), (c), 2003 Tex. Sess. Law Serv. 1245. Furthermore, section 4 of the amending legislation provides that a proceeding that occurred prior to that date is governed by the prior law, which is continued in effect for that purpose. *See* Act of May 28, 2003, 78<sup>th</sup> Leg., R.S., ch. 1294, § 4, 2003 Tex. Sess. Law Serv. 4702. In this case, the records reflect conduct and/or proceedings that occurred prior to September 1, 2003. Therefore, we consider your claim pursuant to the prior law.

- (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.<sup>3</sup> You do not 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. Accordingly, we cannot conclude that the submitted information is the type of information contemplated by section 58.005 of the Family Code.

Although common-law privacy applies to this request, the commission has the discretion to release the information as an intergovernmental transfer due to having received the request from a governmental body. We ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a

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<sup>3</sup> This section also was amended by the 78<sup>th</sup> Legislature. The same amending legislation noted above applies to section 58.005, with section 62 providing that the amended version was effective on September 1, 2003, but further providing that conduct that occurred prior to that date is governed by the prior law, which is continued in effect for that purpose. *See* Act of June 2, 2003, 78<sup>th</sup> Leg., R.S., ch. 283, §§ 62(a), (c), 2003 Tex. Sess. Law Serv. 1245. Therefore, we also consider this provision pursuant to the prior law.

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). Accordingly, 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, the commission has the discretion to release the requested information to the district attorney in its entirety.

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

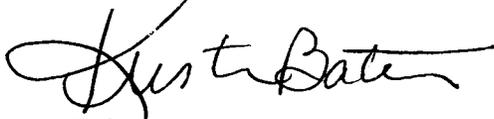
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 191373

Enc. Submitted documents

c: Mr. Larry Valone  
Criminal Investigator  
Tarrant County Criminal District Attorney  
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(w/o enclosures)