



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2004

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

OR2004-0648

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# 195221.

The Texas Youth Commission (the "commission") received a request for information pertaining to the investigation of an incident involving the requestor, a former commission employee. Specifically, the requestor asks for the following information: a videotape relating to a specified incident involving the requestor that occurred on July 16, 2003, at a commission facility; tape recordings of hearings held July 25, 2003 and August 19, 2003, concerning an allegation against a named youth in the custody of the commission; behavior incident reports relating to the youth for the last three years. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

As a preliminary matter, we note that we ruled on the public availability of the requested videotape and audio tape recordings in Open Records Letter No. 2004-0593, issued

¹ 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.

January 27, 2004. Because we find that the facts and circumstances concerning the request at issue in Open Records Letter No. 2004-0593 have not changed, we determine that the commission must continue to follow Open Records Letter No. 2004-0593 as a previous determination with respect to the requested videotape and audio tape recordings. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act (the "Act"); and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling.)

We next address your claimed exception with respect to the submitted representative sample of incident reports. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You claim that this information is confidential under section 61.073 of the Human Resources Code. Section 61.073 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 § 61.073.² Section 58.005(a) of the Family Code provides that "[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment . . . of a child by [an agency] providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court" may only be disclosed to certain individuals under certain circumstances. You indicate that the information at issue consists of records of an examination of the treatment of a child in the custody of the commission, and a record of an order concerning the disposition of the child. Upon review, we determine that section 61.073 is applicable to the information at issue in this instance, and

² As you acknowledge, section 61.073 was amended by the 78th Legislature. Section 4 of the amending legislation provides that the amended version of section 61.073 was effective on September 1, 2003, but further 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 June 21, 2003, 78th Leg., R.S., ch. 1294, §§ 1, 4, 2003 Tex. Sess. Law Serv. 4701. We understand you to represent that the information at issue relates to hearings that occurred prior to September 1, 2003. Accordingly, we consider your claim pursuant to the prior law.

we find that section 58.005 of the Family Code does not authorize the release of the information. We therefore conclude that the commission must withhold the information at issue pursuant to section 552.101 of the Government Code.³

In summary, the commission must follow Open Records Letter No. 2004-0593 with respect to the requested videotape and audio tape recordings. The commission must withhold the remaining information at issue in this instance pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.

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).

³ Based on this finding, we do not reach your other argument under section 552.101 with respect to this information.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 195221

Enc: Submitted documents

c: Mr. Darrick W. Ervin
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(w/o enclosures)