



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2004

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

OR2004-5906

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# 205294.

The Texas Youth Commission (the "commission") received a request for copies of investigations involving the requestor since the beginning of his employment. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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 information protected by other statutes. Section 261.201 of the Family Code provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

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<sup>1</sup> 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.

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (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.

Fam. Code § 261.201(a). The commission is an agency authorized to conduct investigations under chapter 261. *See* Fam. Code §261.401(b) (state agency that operates, licenses, certifies, or registers facility in which children are located shall make prompt, thorough investigation of report that child has been or may be abused, neglected, or exploited in facility). We note that a “child” is defined for purposes of section 261.201(a) 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.” *See* Fam. Code § 101.003(a) (defining “child”). We also note that investigation numbers 04-0484 and 04-0472 do not reveal whether the individuals who were the alleged victims in these matters were children for purposes of section 261.201 at the time of the alleged offenses. Therefore, we are unable to conclude that investigation numbers 04-0484 and 04-0472 concern reports or investigations of alleged or suspected abuse or neglect under chapter 261. Accordingly, we conclude that the commission may not withhold any portion of the information from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code.

We next address the information you have marked under section 552.101 in conjunction with section 61.073 of the Human Resources Code. As amended by the Seventy-eighth Legislature, section 61.073 of the Human Resources Code provides as follows:

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 and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 61.0731, Human Resources Code, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 61.073.<sup>2</sup> You indicate that the information at issue consists of records relating to children in the custody of the commission.<sup>3</sup> Upon review, we determine that section 61.073 is applicable to the information you have marked. We have marked some additional information that is subject to section 61.073. We therefore conclude that the commission must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.

Section 552.101 of the Government Code also 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. You contend that the names and initials of youths appearing in the remaining documents at issue are excepted under section 552.101 in conjunction with common-law privacy. We agree that the names and initials at issue are protected by privacy. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. Thus, we have marked the information that the commission must withhold in the remaining submitted documents pursuant to section 552.101 in conjunction with common-law privacy.

In summary, the commission must withhold the information that is marked pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code. We have marked the names and initials of youths in the custody of the commission that are protected by common-law privacy and must be withheld under

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<sup>2</sup> Section 61.093(c) of the Human Resources Code authorizes the disclosure of information relating to a child who has escaped from custody. Section 61.0731 of the Human Resources Code authorizes the disclosure of information concerning a child to the child and the child's parent or guardian, if disclosure would not materially harm the treatment and rehabilitation of the child and would not substantially decrease the likelihood of the commission receiving information from the same or similar sources in the future. Section 58.005(a) of the Family Code provides that information 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 be disclosed only to certain specified persons or under certain specified circumstances. Chapter 61 of the Code of Criminal Procedure governs information pertaining to criminal combinations and criminal street gangs. The commission does not indicate that it is authorized to release any of the information at issue under sections 61.0731 or 61.093 of the Human Resources Code, section 58.005(a) of the Family Code, or chapter 61 of the Code of Criminal Procedure.

<sup>3</sup> For the purposes of chapter 61 of the Human Resources Code, a "child" is a person less than 21 years old.

section 552.101 of the Government Code. The remainder of the submitted information must be released to the requestor.

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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/seg

Ref: ID# 205294

Enc. Submitted documents

c: Mr. Gregory E. Ruth  
Al Price State Juvenile Correctional Facility  
3890 FM 3514  
Beaumont, Texas 77705  
(w/o enclosures)