



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2006

Ms. Karol H. Davidson
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2006-01603

Dear Ms. Davidson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 242589.

The Texas Youth Commission (the "commission") received a request for information relating to an alleged assault, the alleged victim, the correctional officer who was accused of assault, and related matters.¹ You have submitted information that you claim is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We assume that the commission has released any other types of information that are responsive to this request,

¹We note that this request for information contains questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body need not take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume that the commission has done so.

to the extent that such information existed when the commission received the request.² If not, then the commission must release any such information at this time. *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Initially, we address the commission's obligations under section 552.301 of the Government Code. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that the governmental body must ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the request for information. *See* Gov't Code § 552.301(b). If a governmental body does not comply with section 552.301 in requesting an attorney general decision, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You concede that the commission failed to comply with section 552.301(b) in requesting this decision. However, because the applicability of section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address this exception.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. 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 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.

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Fam. Code § 261.201(a). We note that the commission is authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 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). According to the submitted documents, the alleged victim in the incident to which the information pertains was seventeen years of age at the time of the incident and thus was a child for purposes of chapter 261. *See id.* § 101.003(a) (defining “child” for purposes of Fam. Code § 261.201 as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Moreover, we have reviewed the submitted information and find that it consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Therefore, the submitted information falls within the scope of section 261.201 of the Family Code.³

We note that the commission has adopted rules concerning investigations of alleged abuse, neglect, or exploitation. *See id.* § 261.409 (commission by rule shall adopt standards for investigation under Fam. Code § 261.401). Section 93.33 of title 37 of the Texas Administrative Code provides in part that

[a] report *will be provided* to a parent, managing conservator or other legal representative of a youth upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.

37 T.A.C. § 93.33(1)(5) (emphasis added). In this instance, the requestor is a parent of the youth who was the victim of the alleged abuse. Therefore, under section 93.33(1)(5), the commission must provide the requestor with a copy of the submitted investigative report, which we have marked, after redacting the report to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure of the report. The rest of the submitted information is confidential under section 261.201 of the

³We note that the commission raises section 552.101 in conjunction with section 61.073 of the Human Resources Code, which states in part that “[e]xcept 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; *see also id.* § 61.0731 (authorizing permissive release of records by commission “to the child and the child’s parent or guardian only 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”). In this instance, however, the submitted information is subject to section 261.201 of the Family Code, which is the more specific statute. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex.2000) (the “more specific statute controls over the more general”); *cf.* Open Records Decision No. 598 (1991) (in governing access to specific subset of information, statutory predecessor to Medical Practice Act prevailed over more general provisions of predecessor to Public Information Act).

Family Code and must be withheld from the requestor under section 552.101 of the Government Code. As we are able to make this determination, we do not address your other claim under section 552.101.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

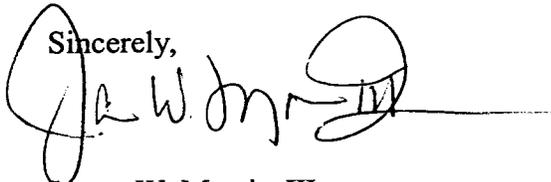
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 242589

Enc: Submitted documents

c: Ms. Mary Jane Martinez
7402 Deep Spring
San Antonio, Texas 78238
(w/o enclosures)