



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 31, 2006

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

OR2006-05676

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# 250229.

The Texas Youth Commission (the "commission") received a request for:

- 1) the names and employment information of each employee who worked at a certain juvenile center during a particular month;
- 2) the name, date of birth and current address for four named juvenile offenders;
- 3) an investigation report regarding an injury sustained by a named individual; and
- 4) all statements by the named individual and any witnesses regarding the injury.

You inform us the commission has notified the requestor it does not have records responsive to item 1.¹ You claim that the remaining requested information is excepted from disclosure

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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.

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 Exhibits A and B and find that they consist of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Therefore, Exhibits A and B fall within the scope of section 261.201 of the Family Code.

We note, however, 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 states that he is an attorney representing the youth's mother, and that the request letter is being written on behalf of the named youth. Therefore, under section 93.33(1)(5), the commission must provide the requestor with a copy of Exhibit A 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. However, Exhibit B is confidential under section 261.201 of the Family Code and must be withheld from the requestor under section 552.101 of the Government Code.

Section 552.101 also encompasses section 61.073 of the Human Resources Code, which provides 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 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. Exhibit C consists of records relating to children in the custody of the commission. We find that Exhibit C falls within the scope of section 61.073. There is no indication that the requestor would have a right of access to any of the information under section 61.093(c) of the Human Resources Code, section 58.005 of the Family Code, section 61.0731 of the Human Resources Code, or chapter 61 of the Code of Criminal Procedure.² We therefore conclude that the commission must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code as information made confidential by law.

²Section 61.093(c) of the Human Resources Code provides for disclosure of information relating to a child who has escaped from custody. 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. Section 61.0731 of the Human Resources Code provides for the disclosure of information to a child or a child's parent or to a person having a legitimate need for information regarding a child's location and committing court. Chapter 61 of the Code of Criminal Procedure is applicable to information pertaining to criminal combinations and criminal street gangs.

In summary, the commission must provide the requestor with a copy of Exhibit A 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. Exhibit B is confidential under section 261.201 of the Family Code and must be withheld from the requestor under section 552.101 of the Government Code. The commission must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code as information made confidential by law.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/krl

Ref: ID# 250229

Enc. Submitted documents

c: Mr. Charles Dunn
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(w/o enclosures)