



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 12, 2006

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

OR2006-11979

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# 261799.

The Texas Youth Commission (the "commission") received a request for a specified investigative report, as well as any investigative reports involving 11 named current or former commission employees from January 1, 2002 to August 1, 2006.<sup>1</sup> You state that the commission will release some of the requested information to the requestor. 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.<sup>2</sup>

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<sup>1</sup>You inform us that the commission has clarified the request with the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. This section 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). The commission is authorized to conduct an investigation 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). Having reviewed Exhibit E, we find that it constitutes files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. 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 section 261.401 of Family Code); 37 T.A.C. § 93.33. You explain that the requestor does not have a right of access to this particular information under the commission’s rules in this instance. *See* 37 T.A.C. §§ 93.33(1)(5) (a report will be provided to a parent, managing conservator or other legal representative of a youth upon request), (1)(7)(A) (evidence gathered in the course of an investigation may be provided upon request “to an employee having a right to the information in order to appeal the investigation findings or defend against a disciplinary action arising from the investigation findings”). Accordingly, we conclude that the commission must withhold Exhibit E pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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 F consists of records relating to children in the custody of the commission. We find that the information in Exhibit F 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 marked 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. We therefore conclude that the commission must withhold Exhibit F 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.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. In addition, in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

In accordance with *Ellen*, a governmental body must withhold information that would tend to identify a witness or victim of sexual harassment. We note, however, that *Ellen* provides no protection to individuals who are accused of sexual harassment. *See id.*; *see also* Open Records Decision Nos. 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former sections 552.101 or 552.102 of Government Code), 208 at 2 (1978) (information relating to complaint against public employee and disposition of complaint is not protected under either constitutional or common-law right of privacy). You assert that the information you have

marked in Exhibit G is identifying information of a victim and witnesses in a sexual harassment investigation. Thus, we agree that the commission must withhold the information you have marked in Exhibit G, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and in accordance with *Ellen*.

In summary, the commission must withhold the following: (1) Exhibit E pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) Exhibit F under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code; and (3) the information you have marked in Exhibit G, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and in accordance with *Ellen*. The remaining 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, 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/eb

Ref: ID# 261799

Enc. Submitted documents

c: Mr. Edward McElyea  
1411-J North Valley Mills Drive, #350  
Waco, Texas 76710  
(w/o enclosures)