



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 20, 2007

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

OR2007-04517

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# 276250.

The Texas Youth Commission (the "commission") received a request for the following: (1) copies of security tapes that captured a particular fight that occurred at the Evins Regional Juvenile Center; (2) copies of the incident reports pertaining to the fight; (3) copies of complaints made against correctional officers stemming from the fight; (4) copies of the medical records of those treated after the fight; (5) statistics showing the number of fights that occurred at Evins Regional Juvenile Center in 2004, 2005, and 2006; and (6) statistics revealing the number of correctional officer at Evins Regional Juvenile Center disciplined or fired in 2004, 2005, and 2006. You state that you have no information responsive to item 3. We note that the Act does not require the commission to release information that did not exist when it received this 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). You further state that you have released the information responsive to items 5 and 6, but claim that the information responsive to items 1, 2, and 4 is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. This section encompasses information protected by other statutes. Section 61.073 of the Human Resources Code 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 (emphasis added). For purposes of chapter 61 of the Human Resources Code, a child is defined as “a person 10 years old or older and under 21 years old who is committed to the commission under Title 3, Family Code.” *Id.* § 61.001(6). You state that the submitted information involves children committed to the care of the commission under Title 3 of the Family Code. Accordingly, we find that the submitted information 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.<sup>1</sup> We therefore conclude that the commission must withhold the submitted information 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.<sup>2</sup>

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

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<sup>1</sup>Section 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.

<sup>2</sup>Because our ruling is dispositive, we need not address your remaining arguments for this information.

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,



Aries Solis  
Assistant Attorney General  
Open Records Division

AS/eb

Ref: ID# 276250

Enc. Submitted documents

c: Mr. Michael Barnett  
1400 Nolana Avenue  
McAllen, Texas 78504  
(w/o enclosures)