



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2007

Ms. Patricia Fernandez
Open Government Authority
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714

OR2007-13030

Dear Ms. Fernandez:

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 #290967.

The Texas Department of Family and Protective Services (the "department") received a request for the "entire file for Woodside Trails Wilderness and Woodside Trails Therapeutic Camp ('Woodside')." You claim that the submitted investigation and monitoring files are excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Appendix A was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-13015 (2007). We conclude that the department may continue to rely on this ruling as a previous determination for Appendix A. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we address your arguments for Appendix B, Woodside's monitoring file. You acknowledge that a facility's monitoring file is typically released in accordance with

section 745.8481 of title 40 of the Texas Administrative Code. *See* 40 T.A.C. § 745.8481 (establishing rule that facility's monitoring file is generally available to public). In enacting section 745.8481, the department articulated its policy that a facility's monitoring file is generally open to the public. Accordingly, we find that Appendix B is subject to section 552.022(a) of the Government Code, which provides in pertinent part:

[w]ithout limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). You seek to withhold Appendix B from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not make information confidential. Therefore, the department may not withhold Appendix B under section 552.103 of the Government Code. However, in releasing Appendix B, the department must withhold the identity of any alleged victims or their families, any other children involved in the investigation, the reporter, the alleged perpetrator, and any other individual whose life or safety might be endangered by the release of the monitoring file. *See* 40 T.A.C. § 745.8487 (listing categories of information that must be withheld from disclosure of facility's monitoring file).

In summary, the department may continue to rely on Open Records Letter No. 2007-13015 with regards to Appendix A. In Appendix B, the department must withhold information subject to section 745.8487 of title 40 of the Texas Administrative Code. The remaining information in Appendix B must be released.

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).

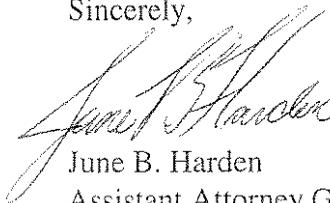
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/eeg

Ref: ID# 290967

Enc. Submitted documents

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(w/o enclosures)