



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2007

Mr. Charles K. Eldred  
Attorney for Public Information  
Texas Youth Commission  
P.O. Box 4260  
Austin, Texas 78765

OR2007-14158

Dear Mr. Eldred:

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# 291771.

The Texas Youth Commission (the "commission") received a request for information relating to investigations regarding a named employee of the commission. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.<sup>1</sup>

First, we must address the commission's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ). In

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the commission to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

this instance, the commission has not demonstrated that this decision was requested within the ten-business-day deadline prescribed by section 552.301(b). *See* Gov't Code § 552.308(b) (prescribing requirements for proof of timeliness of action by interagency mail). Therefore, the submitted information is presumed to be public under section 552.302. This statutory presumption 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). Because the commission's claims under section 552.101 can provide compelling reasons for non-disclosure, we will address your arguments.

Section 552.101 excepts from 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); *see id.* § 261.001 (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). 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). In this instance, the information submitted as Exhibits B and F and some of the information in Exhibit E relate to incidents in which the alleged victim was less than 18 years of age at the time of the incident and thus was a child for purposes of chapter 261 of the Family Code.<sup>2</sup> *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 find that the information in question consists of files, reports, records, communications, and working

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<sup>2</sup>As you point out, and we agree, the information in question in Exhibit E is a duplicate of the information in Exhibit F.

papers used or developed in an investigation made under chapter 261. Therefore, Exhibits B and F and the information that we have marked in Exhibit E fall within the scope of section 261.201 of the Family Code.

We note that the 80<sup>th</sup> Texas Legislature recently added subsections (i) and (j) to section 261.201. Section 261.201(i) and (j), which relate to the release of certain information held by the commission, state:

(i) Notwithstanding subsection (a), the [commission] shall release a report of alleged or suspected abuse or neglect made under this chapter if :

(1) the report relates to a report of abuse or neglect involving a child committed to the commission during the period that the child is committed to the commission; and

(2) the commission is not prohibited by Chapter 552, Government Code, or other law from disclosing the report.

(j) The [commission] shall edit any report disclosed under Subsection (I) to protect the identity of:

(1) a child who is the subject of the report of alleged or suspected abuse or neglect;

(2) the person who made the report; and

(3) any other person whose life or safety may be endangered by the disclosure.

Act of April 10, 1995, 74th Leg., R.S., ch. 20, 1995 Tex. Gen. Laws 113, 262, *amended by* Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Sess. Law Serv. 422, 429. We also note that the commission has adopted rules concerning investigations of alleged abuse, neglect, or exploitation. *See* Fam. Code § 261.409 (commission by rule shall adopt standards for investigation under Fam. Code § 261.401). Section 93.33(l) of title 37 of the Texas Administrative Code provides in part:

(3) A report and any other related investigation information shall be released, upon written request, to any member of the public unless the report or information is made confidential by a law other than Texas Family Code § 261.201. The report and information must be redacted to protect the identity of :

(A) the child, as defined under Texas Family Code § 101.003(a), who is the subject of the report;

(B) the person making the report; and

(C) any other person whose life or safety may be endangered by the disclosure.

37 T.A.C. § 93.33(l)(3). In this instance, the children involved in the investigations in question were committed to the commission at the time of the alleged abuse or neglect. Therefore, under section 261.201(i) of the Family Code and section 93.33(l)(3) of title 37 of the Texas Administrative Code, the commission must generally provide the requestor with the submitted records of the investigations, after redacting the information to protect the identities of the children who are the subjects of the reports, the persons making the reports, and any other persons who may be harmed by the disclosure of the reports. *See* Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Sess. Law Serv. 422, 429 (to be codified at Fam. Code § 261.201(i)-(j)); 37 T.A.C. § 93.33(l)(3).

The commission asks whether information subject to chapter 261 must be redacted pursuant to section 58.005 of the Family Code, section 61.073 of the Human Resources Code, or the doctrine of common-law privacy, which also are encompassed by section 552.101 of the Government Code. Records and all other information concerning children in the custody of the commission are generally confidential under sections 58.005 and 61.073, provided that the children are of specified ages. *See* Fam. Code § 58.005(a); Hum. Res. Code § 61.073. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Thus, in this instance, there would be a conflict of laws between section 261.201 of the Family Code and sections 58.005 and 61.073 and common-law privacy. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See* Gov't Code § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, the information in question is subject to section 261.201, which is a more specific statute than either section 58.005 or section 61.073. Moreover, as a general rule, the exceptions to required public disclosure provided in the Act are not applicable to information that a statute other than the Act expressly makes public. Open Records Decision No. 623 at 3 (1994). Accordingly, the commission may not withhold any of the submitted information that is subject to section 261.201 under section 58.005 of the Family Code, section 61.073 of the Human Resources Code, or common-law privacy. Instead, the commission must release Exhibits B and F and the marked information in

Exhibit E pursuant to section 261.201 of the Family Code, after redacting the information to protect the identities of the children who are the subjects of the reports, the persons making the reports, and any other person who may be harmed by the disclosure of the reports.

You also contend that some of the remaining information is confidential under section 61.073 of the Human Resources Code, which provides as follows:

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. You state that the remaining documents in Exhibit E contain identifying information of youths in the custody of the commission. We conclude, however, that the documents in question do not constitute information concerning a child for the purposes of section 61.073. We therefore conclude that the commission may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.

We also conclude, however, that the commission must withhold some of the remaining information in Exhibit E under section 552.101 in conjunction with common-law privacy. Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*, as well as information that this office has determined to be private. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs); *see generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked identifying information of youths in the custody of the commission that must be withheld from disclosure under section 552.101 in conjunction with common-law privacy. *Cf.* Hum. Res. Code § 61.073. We also have marked information relating to employees of the commission that must be withheld on this basis.

We also note that section 552.117 of the Government Code is applicable to some of the remaining information in Exhibit E.<sup>3</sup> Section 552.117(a)(1) excepts from disclosure the

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<sup>3</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We have marked information in Exhibit E that the commission must withhold under section 552.117(a)(1) if the employee concerned timely requested confidentiality for the marked information under section 552.024. We note that a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

In summary: (1) the commission must release Exhibits B and F and the marked information in Exhibit E under section 261.201 of the Family Code, after redacting the information to protect the identities of the children who are the subjects of the reports, the persons making the reports, and any other persons who may be harmed by the disclosure of the reports; (2) the commission must withhold the information that we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the commission must withhold the information that we have marked in Exhibit E under section 552.117(a)(1) of the Government Code if the employee concerned timely requested confidentiality for the marked information under section 552.024 of the Government Code. The rest of the submitted information must be released.

You also appear to request a previous determination that would permit the commission to redact and release information under section 261.201 of the Family Code without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue such a decision at this time. 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).

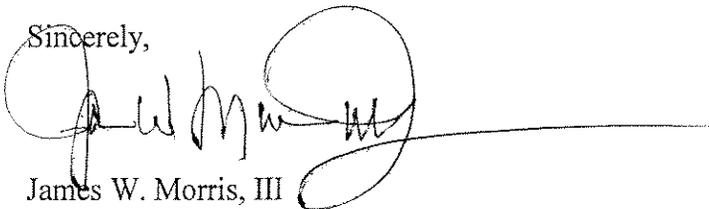
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 'James W. Morris, III', with a long horizontal line extending to the right.

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

JWM/ma

Ref: ID# 291771

Enc: Submitted documents

c: Ms. Connie Hansen  
c/o Mr. Charles K. Eldred  
Texas Youth Commission  
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(w/o enclosures)