



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2008

Mr. W. Clayton Cain  
Cullen, Carsner, Seerden & Cullen, L.L.P.  
P.O. Box 2938  
Victoria, Texas 77902-2938

OR2008-05608

Dear Mr. Cain:

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# 309391.

The Victoria Regional Juvenile Justice Center (the "center"), which you represent, received a request for several categories of information: (1) time sheets for a named individual for a specified time period (May 17 through May 24, 2007); (2) a copy of tape for May 18, 2007, logs for Unit C for the same specified time period; (3) logs for four named individuals for the same specified time period; (4) copy of detention center rules given to detainees at the center; (5) copies of the infractions for which four individuals were written up while detained; (6) copy of the policy/rule manual for employees regarding their duties for checking the unit and writing logs; (7) any notes of an infraction by a named individual as reported by three named individuals; and (8) a room roster for the named individuals for the same specified time period. You state that the center is providing the requestor copies of the requested time sheets, the detention center rules, and the policy/rule manual for employees. You also state that no responsive information exists for a portion of the request, specifically, the tape in request item number (2).<sup>1</sup> You claim that the submitted information is excepted

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. 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), 563 at 8 (1990), 555 at 1-2 (1990).

from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information that other statutes make confidential. You contend that the submitted information is excepted in its entirety under sections 58.005 and 58.106 of the Family Code. Section 58.005 provides:

(a) Records and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution 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:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) a governmental agency if the disclosure is required or authorized by law;

(5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(6) the Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or

(7) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Fam. Code § 58.005(a). After review of the submitted information and consideration of your arguments, we conclude that portions of the submitted information are subject to section 58.005(a). We have no information to allow us to conclude that the requestor is one

of the listed individuals to whom the information may be disclosed. Thus, the center must withhold this information under section 552.101 in conjunction with section 58.005. However, you do not explain, nor can we ascertain from our review of the information at issue, how the roster we have marked constitutes a record or file concerning a child or information obtained for the purpose of diagnosis, examination, evaluation, or treatment, or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court. Accordingly, we cannot conclude that the roster we have marked is the type of information contemplated by section 58.005 of the Family Code. With regard to the marked roster, we will address your remaining arguments against disclosure.

You also claim that the submitted information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 58.106 of the Family Code. We note that subchapter B of chapter 58 of the Family Code, which contains section 58.106, pertains to the administration of the juvenile justice information system by the Texas Department of Public Safety. Because the records at issue were not requested from the Texas Department of Public Safety, we conclude that section 58.106 of the Family Code is not applicable in this instance.

Section 552.108 of the Government Code exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. You state that the Victoria County District Attorney’s Office (the “district attorney”) is currently conducting a criminal prosecution for allegations of official oppression and indecency with a child. However, you do not provide a representation from the district attorney, who is conducting the prosecution, that the submitted roster is related to the criminal allegations and that release will interfere with the criminal prosecution. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) to the submitted roster. Accordingly, the center may not withhold the roster under section 552.108 of the Government Code.

We note, however, that portions of the roster are protected from disclosure by common-law privacy. Section 552.101 of the Government Code encompasses the doctrine of

common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type 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, this office has found that common-law privacy applies to the identifying information of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. Therefore, the center must withhold any identifying information of juvenile offenders under section 552.101 on the basis of common-law privacy.

In summary, with the exception of the roster, the submitted information is subject to section 58.005(a) of the Family Code and must be withheld based on section 552.101 of the Government Code. The center must withhold any identifying information of juvenile offenders in the roster under section 552.101 on the basis of common-law privacy. The remaining information 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 309391

Enc. Submitted documents

c: Ms. Lidia Serrata  
302 E. Constitution Street  
Victoria, Texas 77901  
(w/o enclosures)