



October 10, 2001

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2001-4588

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153119.

The Midland Police Department (the "department") received a request for all information, including victim statements, relating to an individual involved in an offense of aggravated assault of a child. You have submitted for our review a witness statement of the victim. 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 information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the submitted witness statement relates to an allegation of child abuse, the document is generally confidential under section 261.201 of the Family Code. In this instance however, we believe the requestor has a special right of access to the witness statement and that such release would be for a purpose consistent with state law under section 261.201 of the Family Code.

In this instance, the requestor identifies herself as "a caseworker in the [Texas Youth Commission's] Sex Offender Treatment Program at Brownwood State School Unit One," and that the requested information "will be used for the purposes of administering polygraph examinations and determining if [the child] has successfully met criteria for completion of the Sex Offender Treatment Program at Brownwood State School." Subchapter F of the Human Resources Code prescribes the authority of the Texas Youth Commission (the "commission") related to the admission and treatment of children under the care of the commission. The commission's authority to conduct such a polygraph examination is found in section 61.0813(a)(2) of the Human Resources Code. Section 61.0813 provides in pertinent part:

(a) Before releasing a child described by Subsection (b) under supervision, the commission may require as a condition of release that the child:

(1) attend psychological counseling sessions for sex offenders as provided by Subsection (e); and

(2) submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the child's treatment progress.

(b) This section applies to a child only if:

(1) the child has been adjudicated for engaging in delinquent conduct constituting an offense:

(A) under Section 21.08, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(B) under Section 20.04(a)(4), Penal Code, if the child engaged in the conduct with the intent to violate or abuse the victim sexually; or

(C) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the child engaged in the conduct with the intent to commit a felony listed in Paragraph (A) or (B) of this subdivision; and

(2) the victim of the conduct described by Subdivision (1) was a child as defined by Section 22.011(c), Penal Code.

Hum. Res. Code § 61.0813(a), (b). Section 61.065(b) of the Human Resources Code provides that “[t]he court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the commission all pertinent information in their possession regarding the case.” Section 61.065(b) therefore specifically grants the commission a right of access to the department’s information related to the child’s case. Therefore, the department must release the witness statement to the requestor under section 61.065(b) of the Human Resources Code.

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).

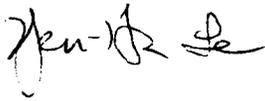
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Dept. of Public 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 General Services Commission 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/sdk

Ref: ID# 153119

Enc: Submitted documents

c: Ms. Sherrie Burney
Caseworker III
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(w/o enclosures)