



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2003

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2003-8166

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191012.

The Texas Youth Commission (the "commission") received a request for five categories of information pertaining to the requestor, a commission employee. You state that two requested items of information regarding disciplinary actions and a grievance have been provided to the requestor, and that information concerning an investigation of mistreatment allegations against the requestor will be provided to the requestor in accord with commission procedures once the investigation is completed. You also state that no information exists that is responsive to the item of the request seeking information regarding an investigation of the requestor's written reprimand. With respect to the final item of the request, for information from a hearing concerning a youth in the custody of the commission, you claim that the requested 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that the information at issue is confidential under section 61.073 of the Human Resources Code. Section 61.073 provides:

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 are not public and are available only

according to the provisions of Section 58.005, Family Code, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 61.073.¹ Section 58.005(a) of the Family Code provides that “[i]nformation 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 only be disclosed to certain individuals under certain circumstances. You state that the submitted hearing records constitute records of an examination of the treatment of a child in the custody of the commission, and records of an order concerning the disposition of the child. Section 58.005 of the Family Code does not authorize the release of the submitted information in this instance. Based on your representations and our review of the submitted information, we conclude that the submitted documents are confidential under section 61.073 of the Human Resources Code and must be withheld in their entirety pursuant to section 552.101 of the Government 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

¹As you acknowledge, section 61.073 was amended by the 78th Legislature. Section 4 of the amending legislation provides that the amended version of section 61.073 was effective on September 1, 2003, but further provides that a proceeding that occurred prior to that date is governed by the prior law, which is continued in effect for that purpose. *See* Act of June 21, 2003, 78th Leg., R.S., ch. 1294, §§ 1, 4, 2003 Tex. Sess. Law Serv. 4701. In this case, as the hearing at issue occurred on August 19, 2003, we consider your claim pursuant to the prior law.

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 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 191012

Enc: Submitted documents

c: Mr. Darrick W. Ervin
Juvenile Corrections Officer
McLennan County State Juvenile Correctional Facility
116 Burleson Road
Mart, Texas 76664
(w/o enclosures)