ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2004

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

OR2004-3874

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# 201373.

The Texas Youth Commission (the "commission") received a request for "any films" made on a specified date of an incident involving the requestors' son. You claim that a responsive videotape 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.

Section 552.101 excepts from required public 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 is made confidential by statute. As amended by the Seventy-eighth Legislature, section 61.073 of the Human Resources Code 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.[1] The Seventy-eighth Legislature also enacted section 61.0731 of the Human Resources Code, which provides as follows:

> (a) In the interest of achieving the purpose of the commission and protecting the public, the commission may disclose records and other information concerning a child to the child and the child's parent or guardian only if disclosure would not materially harm the treatment and rehabilitation of the child and would not substantially decrease the likelihood of the commission receiving information from the same or similar sources in the future. Information concerning a person who is age 18 or older may not be disclosed to the person's parent or guardian without the person's consent.
>
> (b) The commission may disclose information regarding a child's location and committing court to a person having a legitimate need for this information.

Id. § 61.0731. We find that section 61.073 is applicable to the submitted videotape. We also note that the requestors are the parents of one of the children to whom the videotape pertains. Section 61.0731 authorizes the commission to release information relating to the requestors' child, unless disclosure of the information would materially harm the treatment or rehabilitation of the child or substantially decrease the likelihood of the commission receiving such information from the same or similar sources in the future. *See id.* You inform us, however, that the videotape also contains images of children other than the requestors' son. You represent to this office that the commission is unable to redact the images of these other children from the videotape. Based on your representations and our review of the videotape, we conclude that the commission must withhold the entire videotape under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code. As we are able to make this determination, we need not address your common-law privacy claim under section 552.101.

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[1]Section 61.093(c) of the Human Resources Code authorizes the disclosure of information relating to a child who has escaped from custody. Section 58.005(a) of the Family Code provides that information 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 be disclosed only to certain specified persons or under certain specified circumstances. Chapter 61 of the Code of Criminal Procedure is applicable to information that pertains to criminal combinations and street gangs. None of the submitted information appears to be subject to section 61.093 of the Human Resources Code, section 58.005(a) of the Family Code, or chapter 61 of the Code of Criminal Procedure.

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).

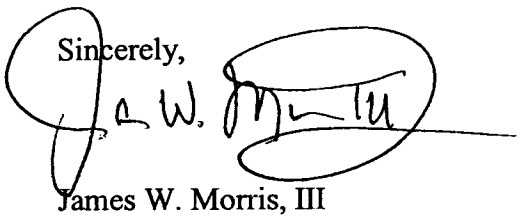
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



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

JWM/sdk

Ref: ID# 201373

Enc: Submitted documents

c: Mr. Jimmy Flores
Ms. Theresa Flores
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(w/o enclosures)