



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2005

Ms. Karol H. Davidson
Staff Attorney
Texas Youth Commission
4900 North Lamar
Austin, Texas 78751

OR2005-03632

Dear Ms. Davidson:

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# 222951.

The Texas Youth Commission (the "commission") received a request for the therapy, counseling and behavior records pertaining to a named youth in the commission's custody. 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.

Initially, we must address the commission's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that the commission received the present request on February 7, 2005. As such, because February 21, 2005 was a national holiday and is not counted as a business day for purposes of the Act, you were required to submit the information required by section 552.301(e) by March 1, 2005. You did not, however, submit written comments explaining why the stated

exception applies or the specific information requested or a representative sample until March 4, 2005. Thus, you failed to comply with section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because section 552.101 can present a compelling reason to withhold information, we will consider its applicability to the submitted information.

Section 552.101 excepts from 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. 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. We find that the submitted information falls within the scope of section 61.073. You advise that the requestor has no right of access to any of the information under section 61.093(c) of the Human Resources Code, section 58.005 of the Family Code, section 61.0731 of the Human Resources Code, or chapter 61 of the Code of Criminal Procedure.¹ We therefore conclude that the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with

¹ Section 61.093(c) of the Human Resources Code provides for 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. Section 61.0731 of the Human Resources Code provides for the disclosure of information to a child or a child's parent or to a person having a legitimate need for information regarding a child's location and committing court. Chapter 61 of the Code of Criminal Procedure is applicable to information pertaining to criminal combinations and criminal street gangs.

section 61.073 of the Human Resources Code as information made confidential by law. As we are able to make this determination, we need not address your remaining arguments against disclosure.

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).

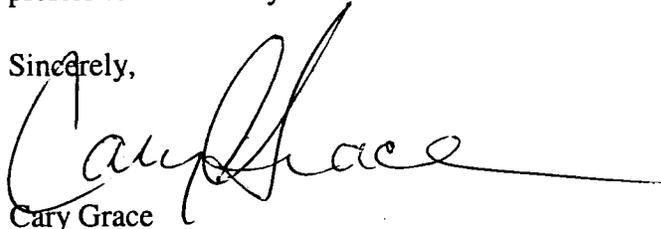
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 222951

Enc. Submitted documents

c: Mr. David M. Williams
County Attorney
County of San Saba
500 East Wallace
San Saba, Texas 76877
(w/o enclosures)