



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2007

Ms. Nydia D. Thomas
Senior Staff Attorney & Public Information Officer
Texas Juvenile Probation Commission
P.O. Box 13547
Austin, Texas 78711

OR2007-09943

Dear Ms. Thomas:

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# 287807.

The Texas Juvenile Probation Commission (the "commission") received a request for copies of all reported allegations of abuse, neglect, or other mistreatment at Dallas County Juvenile Probation department facilities from 2000 through the present. We note that you have informed the requestor that some of the requested information is available on the commission's website.¹ You state that the commission has no responsive information regarding a portion of the request.² You further state that the commission has released statistical summary reports to the requestor, but claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed the submitted arguments as well as the submitted representative sample of information.³

¹ We note that the commission must make available for inspection or provide copies of this information, unless the requestor agrees to accept the commission's reference to the website address as fulfillment of his request for this particular information. *See* Open Records Decision No. 682 (2005).

² We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

³ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201(a) of the Family Code. Section 261.201(a) provides:

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

Fam. Code § 261.201(a). You explain that the commission is mandated to investigate allegations of abuse and neglect under section 261.405 of the Family Code. *See id.* § 261.405(c) (commission shall conduct investigation of alleged abuse, neglect, or exploitation in any juvenile justice program or facility). Further, you state that the information at issue concerns the commission’s investigations into allegations of abuse, neglect, or exploitation. *See id.* § 261.401(a) (defining “abuse,” “exploitation,” and “neglect” for purposes of subchapter E of chapter 261 of the Family Code). Upon review of your arguments and the information at issue, we conclude that the information at issue consists of files, reports, records, and working papers used or developed in investigations made under chapter 261 of the Family Code. You inform us that the commission has adopted rules governing the release of this type of information. *See* 37 T.A.C. § 349.59(a). However, you state that these rules do not authorize this requestor to receive case records and investigatory information. Therefore, we conclude that the information at issue is confidential under section 261.201 of the Family Code, and the commission must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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).

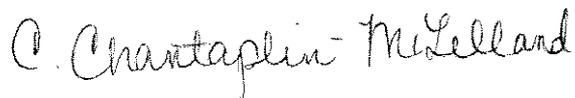
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/sdk

Ref: ID# 287807

Enc. Submitted documents

c: Mr. Gregg Jones
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)