



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2007

Mr. Jeffery S. Boyd
Attorney for Texas Youth Commission
Thompson & Knight L.L.P.
1900 San Jacinto Center
98 San Jacinto Blvd
Austin, Texas 78701-6180

OR2007-10147

Dear Mr. Boyd:

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# 286318.

The Texas Youth Commission (the "commission"), which you represent, received a request for specific recordings referencing particular incidents involving the requestor's son, and copies of grievances and complaints from a specific time period. You state that the commission could not locate one of the requested recordings.¹ 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.

We first note that the submitted information does not include the requested grievances and/or complaints. We therefore assume that the commission has released any information that is responsive to that aspect of the request, to the extent that such information existed when the commission received the request. If not, then the commission must release any such information at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

¹We note that the Act does not require the commission to release information that did not exist when it received this request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). However, a governmental body must make a good faith effort to relate a request for information to information that it holds. *Id.*

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 61.073 of the Human Resources Code, which provides the following:

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. Upon review, we determine that the submitted recordings contain personally identifiable information relating to children in the custody of the commission, and are within the scope of section 61.073. There is no indication that the requestor would have a right of access to any of the information at issue 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. Accordingly, we find that the commission must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.²

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).

²As we are able to make this determination under section 61.073 of the Human Resources Code, we do not address your argument for exception of this information.

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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/mcf

Ref: ID# 286318

Enc: Submitted documents

c: Ms. Mary Jane Martinez
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(w/o enclosures)