



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2007

Mr. Jeffrey S. Boyd
Thompson & Knight LLP
1900 San Jacinto Center
98 San Jacinto Boulevard
Austin, Texas 78701-4238

OR2007-10746

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# 286961.

The Texas Youth Commission (the "commission"), which you represent, received a request for (1) information pertaining to e-mails to and from specified individuals during a specified time period and (2) a roster including the names, previous state school assignment, and commission numbers of recommitted youths that we assigned a certain dorm during a specified time period.¹ You state that you will release a portion of the requested information. You claim that a portion of 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.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹You state, and provide documentation showing, that the requestor agreed to exclude telephone numbers, addresses, and social security numbers of commission employees from his request. *See* Gov't Code § 552.222 (governmental body may communicate with requestor for purpose of clarifying or narrowing request). Accordingly, any such information, including the information you have marked in Exhibit A, is not responsive to the request and need not be released to the requestor. However, as you raise no exceptions to disclosure, the responsive information in Exhibit A must be released to the requestor.

²We assume that the "representative sample" of e-mails submitted to this office is truly representative of the requested e-mails 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.

Initially, we note, and you acknowledge, that the commission has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. See Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your argument concerning this exception.

Section 552.101 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 section 61.073 of the Human Resources Code.³ Section 61.073 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. Upon review, we determine that Exhibits B and C 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 this 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.⁴ We therefore conclude that the commission

³The Office of the Attorney General will raise certain confidentiality statutes on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Section 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.

must withhold Exhibits B and C in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.⁵

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

⁵As our ruling is dispositive under section 61.073, we need not address your argument under section 58.005 of the Family Code.

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 that reads "Tamara L. Harswick". The signature is written in a cursive, flowing style.

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/eeg

Ref: ID# 286961

Enc. Submitted documents

c: Mr. William D. Parker
c/o Jeffrey S. Boyd
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(w/o enclosures)