ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2007

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

OR2007-11016

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# 287410.

The Texas Youth Commission (the "commission"), which you represent, received a request for (1) surveillance videos of specified places during specified times depicting a named youth and (2) various policies and procedures, including those relating to the use of the hotline, the processing of money orders, and corrective measures regarding sexual harassment of and retaliation against youth inmates.[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 have also considered comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We first note that the submitted information does not include the requested policies and procedures. We therefore assume that the commission has released any information that is

[1]With regard to the questions raised by the requestor, we note that the Act does not require a governmental body to answer questions. *See* Open Records Decision No. 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information it holds. *See* Open Records Decision No. 561 at 8 (1990).

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).

Next, the requestor's attorney argues that the requestor, as the parent of a youth depicted in the submitted videos, has a right of access to the submitted surveillance videos, in redacted form, under section 93.33(l)(5) of the Texas Administrative Code. We note that the commission is authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.401(b) (state agency that operates, licenses, certifies, or registers facility in which children are located shall make prompt, thorough investigation of report that child has been or may be abused, neglected, or exploited in facility). The commission has adopted rules concerning investigations of alleged abuse, neglect, or exploitation. *See* Fam. Code § 261.409 (commission by rule shall adopt standards for investigation under Fam. Code § 261.401). Section 93.33(l) of title 37 of the Texas Administrative Code provides in part that

> (5) [a] report will be provided to a parent, managing conservator or other legal representative of a youth upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.

37 T.A.C. § 93.33(l)(5). We find that the submitted surveillance videos do not consist of files, reports, records, communications, videotapes and working papers used or developed in an investigation made under chapter 261 of the Family Code. Therefore, the submitted videos do not fall within the scope of section 261.201 of the Family Code. Accordingly, we need not determine whether section 93.33(l) of title 37 of the Texas Administrative Code would give the requestor a right of access to the videos in this instance.

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 section 61.073 of the Human Resources Code.[2] 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,

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[2]The 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).

> 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 videos contain personally identifiable information relating to children in the custody of the commission, and are within the scope of section 61.073.

Regarding disclosure, section 61.0731 of the Human Resources Code 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. You state that the submitted surveillance videos contain images of the requestor's son. Section 61.0731(a) provides for permissive release to the child's parent or guardian. However, you also state that the surveillance videos contain the images of other youths and that it would be impossible to edit the videos to remove the images of the other youths. There is no indication that the requestor would have a right of access to the images of the other youths 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.[3] Based upon your statements and our review of the surveillance videos, we conclude that the surveillance videos must be withheld in their entirety under

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[3]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 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.[4]

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.

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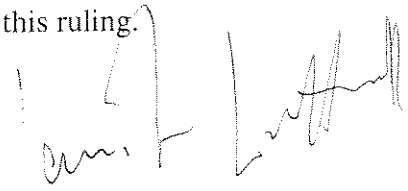
[4]As our ruling is dispositive under section 61.073, we need not address our argument under section 58.005 of the Family Code.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JLU/eeg

Ref: ID# 287410

Enc. Submitted documents

c: Ms. Dana Brockway
P.O. Box 740681
Dallas, Texas 75374
(w/o enclosures)

Mr. Michael Tigar
Texas Civil Rights Project
1405 Montopolis Drive
Austin, Texas 78741-3438
(w/o enclosures)