



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2007

Mr. Charles K. Eldred
Attorney for Public Information
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2007-13013

Dear Mr. Eldred:

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# 289740.

The Texas Youth Commission (the "commission") received a request for records related to (1) custodial deaths at the Coke County Juvenile Justice Center (the "center"); (2) policies regarding deaths in custody; (3) policies regarding mental health care of students; and (4) grievances filed by students concerning mental health care services at the center. You state that you have released information responsive to categories two and three of the request to the requestor. However, you claim that the remaining information at issue is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also received and considered comments submitted by the GEO Group, Inc., the owner of the center. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 made confidential by other statutes. As you acknowledge, the information at issue includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that with the exception of any portion of the custodial death report that the Office of the Attorney General ("OAG") determines is privileged, the OAG shall make the report public. Code Crim. Proc.

¹We 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.

art. 49.18(b). In 2003, the OAG revised the format of the custodial death report to consist of two pages and an attached summary of how the death occurred. The OAG has determined that the two-page report and summary must be released to the public but that any other documents submitted with the revised report are confidential under article 49.18(b). In this instance, you have submitted a revised custodial death report with an attached summary. Pursuant to article 49.18(b), the commission must release the two-page report and attached summary.

You claim that certain information within the custodial death report must be redacted subject to section 61.073 of the Human Resources Code, which is also encompassed by section 552.101 of the Government Code. Records and all other information concerning a child in the custody of the commission are generally confidential under this provision. *See* Hum. Res. Code § 61.073. Thus, in this instance, there would be a conflict of laws between section 61.073 and article 49.18. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, article 49.18 is more specific than the general confidentiality provision in section 61.073. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, the submitted custodial death report must be released without redactions pursuant to article 49.18 of the Code of Criminal Procedure.

You claim that the remaining information in Exhibit C is an attachment to the custodial death report and that this information is therefore confidential under article 49.18. We note that article 49.18(b) does not make confidential all information held by the facility where the individual was incarcerated simply because the information is also included in extraneous documents attached to a custodial death report submitted to the OAG. If a governmental body receives a request for information otherwise generated or maintained by the facility as part of its ordinary responsibilities, those documents may be withheld only if one of the Act's exceptions or another specific law protects them. Open Records Decision No. 521 at 7 (1989). Here, the requestor specifically requests "[a]ll records related to inmate deaths while in custody[.]" Because it appears the commission created the information at issue as part of its ordinary responsibilities, we conclude it does not come within the protection of article 49.18. However, as you also raise section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code for this information, we next address your arguments under this exception.

Section 552.101 of the Government Code encompasses section 61.073 of the Human Resources Code, which 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 the remaining documents at issue 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.² We therefore conclude that the commission must withhold the remaining documents pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.

In summary, the commission must release the custodial death report and summary in its entirety under article 49.18(b) of the Code of Criminal Procedure. The commission must withhold the remaining information pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.³

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).

²Section 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.

³As our ruling is dispositive, we need not consider the GEO Group's arguments against disclosure.

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/jb

Ref: ID# 289740

Enc. Submitted documents

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