



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2009

Ms. Nydia D. Thomas
Deputy General Counsel & Public Information Officer
Texas Juvenile Probation Commission
P.O. Box 13547
Austin, Texas 78711

OR2009-04914

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# 339806.

The Texas Juvenile Probation Commission (the "commission") received two requests from the same requestor for several categories of information relating to Texas Adjudicated Placement Services, Inc. ("TAPS"), including information pertaining to investigations of abuse or neglect alleged against TAPS over a specified period of years. You state most of the requested information has been released to the requestor. 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 representative sample of information.¹

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.

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 investigation into an allegation 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 submitted information consists of files, reports, records, communications, audiotapes, videotapes or working papers used or developed in an investigation made under chapter 261 of the Family Code. You inform us, however, that the commission has adopted rules governing the release of information used or developed in an investigation conducted under chapter 261 of the Family Code. *See* 37 T.A.C. § 349.59(a).

We note that the requestor in this instance is an attorney of an alleged victim of reported abuse. Section 349.59 of title 37 of the Texas Administrative Code reads in part:

(a) To the extent required by state or federal law, or to the extent deemed necessary by the [c]ommission for the protection and care of juveniles, the [c]ommission may release case record information made confidential under Texas Family Code § 261.201(a) to the following listed persons or entities:

...

(7) an attorney, attorney ad litem, guardian ad litem, or court appointed special advocate of an alleged victim[.]

Id. § 349.59(a)(7). You argue section 349.59(a)(7) limits disclosure to “records relating to the minor child for whom the requestor provides legal representation[.]” Further, you argue “no authority exists to allow release of all other investigatory records or reports belonging to other youth simply by virtue of placement in a common facility.” Upon review of your arguments and chapter 349 of title 37 of the Texas Administrative Code, we agree that access under section 349.59(a)(7) is limited to those records which relate to the minor child for whom the requestor provides legal representation. Therefore, we agree the requested information not related to the requestor’s client is confidential under section 261.201 of the Family Code, and the commission must withhold it under section 552.101 of the Government Code.

The remaining information consists of investigatory reports and records that are related to the requestor’s client and thus are subject to release under section 349.59(a)(7). However, section 349.61 states, in part:

(b) Notwithstanding any other provision in this subchapter, the Commission shall not disclose any record or information, which, if released to the requestor, would interfere with an ongoing criminal investigation or prosecution.

(c) Records will not be released until the investigation of an allegation of abuse, exploitation, or neglect is complete.

See id. § 349.61(b)-(c). You state that, at the time the instant request was made, the information relating to the requestor’s client was the subject of an ongoing criminal investigation. Accordingly, we find the commission’s rules governing the release of information used or developed in an investigation conducted under chapter 261 of the Family Code do not allow for release of the information at issue in this instance. *See id.* Therefore, the remaining information 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 information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Entsminger', written over a horizontal line.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 339806

Enc. Submitted documents

c: Requestor
(w/o enclosures)