



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 27, 2011

Ms. Dana Colbert
Records Coordinator
Texas Youth Commission
P.O. Box 12757
Austin, Texas 78711

OR2011-18961

Dear Ms. Colbert:

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# 440495 (TYC ORR # 17965).

The Texas Youth Commission (the "commission") received a request for video footage of a specified incident.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the commission's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the commission received the request for information on October 6, 2011. While you raised section 552.101 within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.108 until after the ten-business-day

¹We note that, effective December 1, 2011, the Texas Youth Commission will be referred to as the Texas Juvenile Justice Department. See Hum. Res. Code § 201.001(b). However, because the current request for information was received prior to December 1, 2011, this ruling references the Texas Youth Commission.

deadline had passed. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the commission failed to comply with the requirements mandated by subsection 552.301(b) as to its argument under section 552.108 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the commission has waived its argument under section 552.108 and may not withhold the submitted information on that basis. However, we will consider your timely raised argument against disclosure under section 552.101 of the Government Code for the submitted information.

Section 552.101 of the Government Code excepts from public 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 244.003 of the Human Resources Code.² Section 244.003 provides as follows:

(a) 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.

(b) Except as provided by Section 243.051(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 244.051, and Chapter 61, Code of Criminal Procedure.

²The 82nd Texas Legislature passed Senate Bill 653, which redesignated section 61.073 of the Human Resource Code as section 244.003 of the Human Resource Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 653, § 1.007 (to be codified as Hum. Res. Code § 244.003).

Hum. Res. Code § 244.003. You state that the requested videotape contains personally identifiable information relating to children in the custody of the commission, and thus, is within the scope of section 244.003. You state that the requestor does not have a right of access to the information at issue under section 241.053(c) of the Human Resources Code, section 58.005 of the Family Code, section 244.051 of the Human Resources Code, or chapter 61 of the Code of Criminal Procedure. Based on your representations and our review, we find section 244.003 is applicable to the information at issue. However, you state that the commission does not have the technology to redact only the information subject to section 244.003 from the videotape. We therefore conclude that the commission must withhold the videotape in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 244.003 of the Human Resources Code.

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, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 440495

Enc. Submitted documents

c: Requestor
(w/o enclosures)