



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2012

Ms. Dana Colbert
Records Coordinator
Office of the General Counsel
Texas Juvenile Justice Department
P.O. Box 12757
Austin, Texas 78711

OR2012-05689

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# 451126 (TJJD ORR # 18632).

The Texas Juvenile Justice Department (the "department") received a request for information pertaining to a named individual.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.²

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 information made confidential by

¹You state the department sought and received clarification of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

other statutes, such as section 244.003 of the Human Resources Code.³ Section 244.003 provides as follows:

(a) The department 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.

Hum. Res. Code § 244.003. Section 201.001 of the Human Resources Code, which became effective on September 1, 2011, currently defines “child” for purposes of chapter 244 as a person “10 years of age or older and younger than 19 years of age who is committed to the department under Title 3, Family Code.” *Id.* § 201.001(a)(2)(B). However, portions of the information at issue concern the individual at 19 and 20 years of age. The statute defining “child” for purposes of former chapter 61 of the Human Resources Code that was in effect when the individual at issue was committed is former section 61.001 of the Human Resources Code, which defined “child” as “a person 10 years old or older and under 21 years old who is committed to the [Texas Youth Commission (the “commission”)] under Title 3, Family Code.”⁴ Act of May 29, 1987, 70th Leg., R.S., ch. 1099, § 1, 1987 Tex. Gen. Laws 3734, 3734 *repealed by* Act of May 9, 2011, 82nd Leg., R.S., ch. 85, § 4.001(a), 2011 Tex. Gen. Laws 366, 441. Although the upper age limit of the definition of “child” has since been lowered to 18, in enacting the change in that limit, the Texas Legislature expressly provided that “[t]he disposition of an individual 10 years of age or older and under 21 years of age who was committed to the commission under Title 3, Family Code, before June 8, 2007 is not affected by” the change in the definition. Act of May 9, 2011, 82nd Leg., R.S., ch. 85, § 4.006(d), 2011 Tex. Gen. Laws 366, 442; *see also id.* § 4.001(a), 2011 Tex. Gen. Laws 366, 441 (repealing chapter 61 of the Human Resources Code). Because the disposition of such individuals who were committed to the department’s custody before June 8, 2007, is not affected by the change, we believe the Legislature intended the records of such individuals in the department’s custody to continue to be confidential even when the records concern individuals at 18 or 19 years of age. The individual whose information is at issue was committed to the department on September 29, 2006. Therefore, we find the records at issue are within the scope of section 244.003.

³In 2011, the 82nd Texas Legislature redesignated section 61.073 of the Human Resources Code as section 244.003 of the Human Resources Code. Act of May 9, 2011, 82nd Leg., R.S., ch. 85, § 1.007, 2011 Tex. Gen. Laws 366, 410.

⁴Effective December 1, 2011, the Texas Youth Commission became known as the Texas Juvenile Justice Department. *See* Hum. Res. Code § 201.001(b).

Although the individual whose information is at issue is deceased, nothing in the statute indicates the Legislature intended the provision to apply only during the lifetime of the juvenile. Section 244.003 appears to protect more than the privacy interests of juveniles. Therefore, the death of the juvenile in this case does not remove information related to him from the protection of section 244.003. *See* Attorney General Opinion DM-61 (1991) (holding question of whether statute lapses is question of statutory construction). There is no indication the requestor has a right of access to the information at issue under section 58.005 of the Family Code, section 243.051(c) or 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 the submitted information is confidential under section 244.003(b) of the Human Resources Code and must be withheld under section 552.101 on that basis.⁵

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/em

Ref: ID# 451126

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵Because our ruling is dispositive, we do not address your remaining arguments against disclosure.