



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2006

Ms. Leona Clay
Administrative Assistant
City of Harker Heights
305 Miller's Crossing
Harker Heights, Texas 76548

OR2006-04202

Dear Ms. Clay:

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# 247395.

The Harker Heights Police Department (the "department") received a request for information relating to a specified case and a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

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. This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) provides as follows:

- (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 [the Family 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 [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, we agree that this information falls within the scope of section 261.201. As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. We therefore conclude that the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). In this instance, however, the requestor identifies herself as a senior investigator for the Texas Medical Board (the “board”). Section 153.006 of the Occupations Code provides in part that “[t]he [board] may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant.” Occ. Code § 153.006(a). Furthermore, section 411.099 of the Government Code specifically grants the board a right of access to obtain criminal history record information (“CHRI”) from the Texas Department of Public Safety (the “DPS”). Section 411.099 provides as follows:

The [board] is entitled to obtain from the [DPS CHRI] maintained by the [DPS] that relates to a person who is:

(1) an applicant for a license under Subtitle B, Title 3, Occupations Code; or

(2) the holder of a license under that subtitle.

Gov’t Code § 411.099.¹ Likewise, under section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *Id.* § 411.087(a)(2). CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2).

¹We note that section 411.099 refers to “[t]he Texas State Board of Medical Examiners.” Section 152.001 of the Occupations Code provides in part that “[a] reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board.” Occ. Code § 152.001(b).

In this instance, the board seeks access to information relating to a specified case involving a named physician. We conclude that, when read together, section 153.006 of the Occupations Code and sections 411.087 and 411.099 of the Government Code grant the board a statutory right of access to a portion of the submitted information. *See also id.* § 411.082(2); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Therefore, the department must release to the board information from the submitted documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charge and its disposition. *See Open Records Decision No. 451 (1986)* (specific statutory right of access provisions overcome general exceptions to disclosure under Act). The department must withhold the rest of the requested information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Furthermore, because section 261.201(a) protects all files, reports, records, communications, and working papers relating to an investigation of child abuse or neglect, the department must not release front-page offense report information in such cases. As we are able to make these determinations, we do not address your other arguments against disclosure.

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).

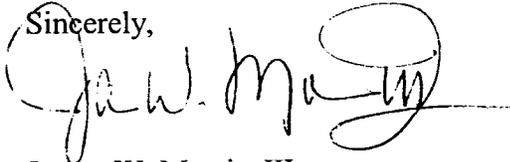
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 247395

Enc: Submitted documents

c: Ms. Denise Zbozny
Texas Medical Board
P.O. Box 2018-MC263
Austin, Texas 78768-2018
(w/o enclosures)