



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2007

Ms. Ann Manning
Underwood, Wilson, Berry, Stein & Johnson, P.C.
For South Plains Community Action Association
P.O. Box 16197
Lubbock, Texas 79416

OR2007-01325

Dear Ms. Manning:

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# 270536.

The South Plains Community Action Association (the "association"), which you represent, received a request for incident reports, complaints, reports made to Child Protective Services, correspondence and the case file pertaining to named individuals. You state that you have released some of the requested information. 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 information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 261.201(a) 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 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, 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). Upon review, we determine that a portion of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of Family Code, ch. 261). Thus, this information is within the scope of section 261.201 of the Family Code. Accordingly, the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101.¹ However, you do not explain, nor can we discern, how the remaining submitted information pertains to an investigation under chapter 261 of alleged or suspected child abuse or neglect. *See id.* Therefore, the remaining submitted information is not confidential under section 261.201 and may not be withheld from disclosure under section 552.101 of the Government Code on that basis.

Section 552.101 also incorporates confidentiality provisions such as the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See Occ. Code § 151.001 et seq.* The MPA governs the disclosure of medical records. Section 159.002 of the MPA provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See Open Records Decision No. 598 (1991)*. In this instance, as the patient is a minor, the medical record we have marked may be released only on the signed consent of the parent or legal guardian of the patient. *Occ. Code § 159.005(a)(2)*. That

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child’s parent(s) may have the right to review that file. *See Fam. Code § 261.201(g)*.

consent must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Therefore, the marked medical record may only be released in accordance with the MPA.

Finally, we note that the remaining information contains social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the association must withhold the social security numbers we have marked pursuant to section 552.147.²

In summary, the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. The marked medical record may only be released in accordance with the MPA. The marked social security numbers must be withheld under section 552.147 of the Government Code. The remaining submitted information must be released.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 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

³We note that the information being released contains information that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, as the parent of the minor individual to whom the information pertains, the requestor has a special right of access to this information. See Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). If the association receives another request for this information from a person who would not have a special right of access, the association should resubmit this same information and request another decision. See Gov’t Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/jww

Ref: ID# 270536

Enc. Submitted documents

c: Mr. Calvin Davis
5111 Itasea Street
Lubbock, Texas 79416
(w/o enclosures)