



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2009

Ms. M. Ann Montgomery  
Assistant County and District Attorney  
Ellis County and District Attorney's Office  
1201 North Highway 77 Suite 104  
Waxahachie, Texas 75165-7832

OR2009-15567

Dear Ms. Montgomery:

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# 360138.

The Ellis County and District Attorney's Office (the "district attorney") received a request for information relating to a case involving a named individual. You claim that most of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you submitted.

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. This exception encompasses information that other statutes make confidential. The submitted information includes medical records that are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

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<sup>1</sup>Although you do not expressly raise section 552.101 of the Government Code, we understand you to claim that exception. Accordingly, we will address your claim under section 552.101, which is a mandatory exception and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(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.

Occ. Code § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records involving a minor may only be released on the parent's or legal guardian's signed, written consent, provided that the consent specifies (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. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). The medical records we have marked must be withheld from disclosure under section 159.002(b) of the MPA, unless the district attorney receives the required written consent for release under sections 159.004 and 159.005.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in part:

(a) [T]he 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, audiotapes, videotapes, 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). We find that the rest of the submitted information was used or developed in an investigation under chapter 261 of the Family Code. *See id.* §§ 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261), 101.003(a) (defining "child" for purposes of Fam. Code tit. 5). As such, the remaining information falls within the scope of section 261.201(a). As you do not indicate that the district attorney has adopted a rule that

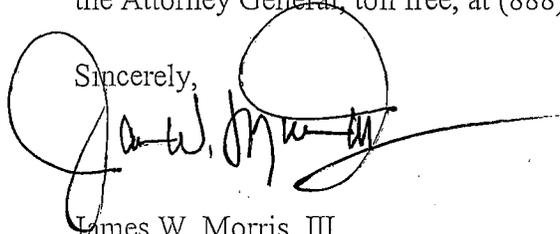
governs this type of information, we assume that no such rule exists. Given that assumption, we conclude that the district attorney must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). We note that because section 261.201(a) protects all "files, reports, records, communications, audiotapes, videotapes and working papers" relating to an investigation of alleged or suspected child abuse or neglect, the district attorney must not release front-page offense report information in such cases.

In summary: (1) the marked medical records must be withheld under section 159.002(b) of the MPA unless the district attorney receives the required written consent for release under sections 159.004 and 159.005; and (2) the district attorney must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we are able to make these determinations, we do not address the other exceptions you claim.

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](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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", written over a circular stamp or mark.

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

JWM/cc

Ref: ID# 360138

Enc: Submitted information

c: Requestor  
(w/o enclosures)