



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2010

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OR2010-01614

Dear Ms. McGowan:

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# 369066.

The Celina Independent School District (the "district"), which you represent, received a request for information relating to the requestors' child. You state the district has released, or will release, some of the responsive information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you have notified a third party whose information is at issue of this request for information and of her right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the third party. *See id.* § 552.304(a) (providing that a person may submit comments stating why information should or should not be released).

Initially, we note that the United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA") does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records

ruling process under the Act.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. §99.3 (defining “personally identifiable information”). You have submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA should be made, we will not address the applicability of FERPA to any of the submitted records other than to note parents have a right of access to their own child’s education records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>2</sup> However, we will consider your arguments against disclosure of the submitted information.

Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses statutory confidentiality provisions. You contend that some or all of the submitted information is confidential under section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides in relevant part:

(a) The following information is confidential and not subject to disclosure under [the Act]:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>2</sup>In the future, if the district does obtain parental or an adult student’s consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

Hum. Res. Code § 48.101(a), (b). We note that chapter 48 of the Human Resources Code applies only to reports and investigative information pertaining to the abuse, neglect, or exploitation of an elderly person or a disabled person. An “elderly person” under this statute means a person who is 65 years of age or older. *See id.* § 48.002(a)(1). A “disabled person” means “a person with a mental, physical, or developmental disability that substantially impairs the person’s ability to provide adequately for the person’s care or protection and who is 18 years of age or older or under 18 years of age and who has had the disabilities of minority removed.” *Id.* § 48.002(a)(8). Upon review, we find that you have not demonstrated that section 48.101 is applicable to the submitted information. Therefore, we conclude that the district may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

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

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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, audiotapes, videotapes, 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). You assert that the submitted information includes a report of alleged child abuse or neglect made to the Texas Department of Family and Protective Services (the “department”). *See id.* §§ 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); 101.003(a) (defining “child” for purposes of chapter 261 as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note that a school district is not an agency authorized to conduct a chapter 261 investigation. *See id.* §§ 261.103, .406. However, you represent, and the documents reflect, that some of the submitted information involves a report of alleged or suspected abuse made to the Child Protective Services Division of the department. Thus, if the information we have marked has been forwarded to an agency conducting an investigation under chapter 261, it constitutes “working papers used or developed” in an investigation under that chapter and is therefore

generally confidential under section 261.201.<sup>3</sup> However, we find that you have failed to demonstrate that the remaining information consists of files, reports, records, communications, and working papers used or developed in an investigation under chapter 261. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in pertinent 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.

Occ. Code § 159.002(a), (b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released on receipt of the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, 159.005. Medical records involving a minor may only

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<sup>3</sup>We note that although the requestors are the parents of the child who is the subject of the report and, as such, may have a right of access to records concerning their child under section 261.201(k), that section only provides for release of information by an "investigating agency." *See* Fam. Code § 261.201(k). However, we note that a parent of a child who is the subject of reported abuse or neglect may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services (the "department"). Section 261.201(g) of the Family Code provides that [the department], upon request and subject to its own rules, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [the department] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. *See id.* § 261.201(g).

be released on the parent's or legal guardian's written consent, provided that the consent meets the above requirements. *See id.* §§ 159.004, 159.005. 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). We note the submitted information consists of nurse's notes regarding the requestors' child that may be subject to the MPA. To the extent the nurse's notes were created under the supervision of a physician, they constitute medical records within the scope of the MPA. However, if these notes were not created under the supervision of a physician, they are not subject to the MPA. Thus, if the notes were created under the supervision of a physician, the district must release or withhold this information in accordance with the statute. *See* Open Records Decision No. 598 (1991). Furthermore, in the event the submitted information was created under the supervision of physician we will address the conflict between section 261.201 of the Family Code and the MPA.

Although the information we have marked is generally confidential under section 261.201 of the Family Code, the MPA may provide the requestors with a right of access to medical records pertaining to their child. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 261.201 generally makes records of alleged child abuse confidential, the MPA is the more specific provision because it permits release of medical records to certain parties and in certain circumstances. We therefore conclude that, notwithstanding the provisions of section 261.201 of the Family Code, the district must release the information we have marked if it receives consent from the requestors that complies with the MPA.

In summary, this ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consist of "education records" subject to FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act. To the extent the submitted information was created under the supervision of physician, the district must release or withhold this information in accordance with the MPA. Otherwise, to the extent the submitted information was not created under the supervision of a physician, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, and the remaining information must be released to the requestors.<sup>4</sup>

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<sup>4</sup>We note that because the requestors have a special right of access to any information being released, the district must again seek a decision from this office if it receives another request for the same information from a different requestor.

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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

Ref: ID# 369066

Enc. Submitted documents

c: Requestors  
(w/o enclosures)