



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2010

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2010-03550

Dear Ms. Messer:

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# 372558.

The Abilene Police Department (the "department") received a request for information pertaining to a specified case number. 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 reviewed the submitted information.

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. You raise section 552.101 in conjunction with 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 [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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You state the submitted report was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as 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). Upon review, we agree that the submitted information is generally within the scope of section 261.201 of the Family Code.

In this instance, the requestor is the parent of the child victim listed in the submitted information. However, the submitted information reflects that the requestor is also alleged to have committed the suspected abuse or neglect. Accordingly, this requestor does not have a right of access to the information pursuant to section 261.201(k). *See id.* § 261.201(k). You do not indicate that the department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given that assumption, we conclude the submitted information is generally confidential 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) (construing statutory predecessor to section 261.201).*

However, we note the submitted information contains medical records that pertain to the requestor’s child. Medical records are governed by the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See Occ. Code § 151.001.* Section 159.002 of the MPA provides, in relevant 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). Information subject to the MPA includes both medical records and information obtained from those records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). 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* ORD 598 (exceptions found in the Act cannot be invoked to deny access to medical records because access provisions of the MPA govern their release). This office has found when a file is created as the result of a hospital stay, all of the documents in the file relating to diagnosis and treatment constitute either physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990).

We note medical records involving a minor may be released under the MPA with 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. Thus, such information may only be released in accordance with the MPA. *See* ORD 598.

Although the submitted information is generally confidential under section 261.201 of the Family Code, the MPA may provide the requestor with a right of access to the medical record, which we have marked, pertaining to his child. Therefore, there is a conflict between the provisions of section 261.201 of the Family Code and the MPA. 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(a) 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. Accordingly, the MPA prevails over section 261.201. Additionally, although you also claim section 552.108 of the Government Code for the

marked medical records, the MPA prevails over the general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986). Accordingly, the department may not withhold the medical records under section 552.108. Thus, the department must release or withhold the marked medical records in accordance with the MPA.¹ The remaining information must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code.²

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 372558

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that because the requestor may have a right of access to some of the information that would otherwise be confidential in this instance, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

²As our ruling on this issue is dispositive, we do not address your other argument against disclosure.