



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-01966

Dear Mr. Wallach:

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# 408602 (PIR Nos. W005095 and W005400).

The City of Fort Worth (the "city") received two requests for a specified offense report from two different requestors: the first request was received by the city on November 15, 2010 (the "first requestor"), and the second on November 30, 2010 (the "second requestor").¹ You claim the requested 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.²

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 section encompasses information protected by other statutes. Section 261.201 of the Family Code provides in relevant part

¹We note that because the information submitted by the city to this office on December 1, 2010 is responsive to the second request, the city complied with its procedural obligations under section 552.301(e) of the Government Code in regard to its request for a ruling related to the second request.

²You state that the city has redacted Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code §§ 552.147 (b), .301(a); Open Records Decision No. 673 at 7-8 (2001).

(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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;
or

(B) another child of the parent, managing conservator,
or other legal representative requesting the
information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261.201 of Family Code). Upon review, we find the submitted information is within the scope of section 261.201(a). The first requestor is not a parent, managing conservator, or other legal representative of the child victim; therefore, the city must withhold the submitted information from the first requestor under section 552.101 in conjunction with section 261.201(a). The second requestor, however, is a parent of the child victim and is not alleged to have committed the suspected abuse. Thus, the city may not withhold the submitted information from the second requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l) provides that before a parent can copy and inspect a record of a child under section 261.201(k), any personally identifiable information about a victim or witness under 18 years of age who is not the parent’s child and the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(1), (3). Thus, the city must withhold from the second requestor the information we have marked under section 552.101 in conjunction with section 261.201(l). The submitted video recordings also contain personally identifiable information about juvenile witnesses who are not children of the second requestor; thus, the city must withhold this information in the submitted video recordings under section 552.101 in conjunction with section 261.201(l)(1) as well.³ The remaining information does not contain any personally identifiable information about a victim or witness under 18 years of age who is not the parent’s child or the identity of the party who made the report; therefore, none of the remaining information is confidential under section 261.201(l)(1) or 261.201(l)(3), and the city may not withhold it under section 552.101 on that ground. However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we must address the applicability of section 58.007 of the Family Code and the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, to the submitted information as it relates to the second requestor.

Section 552.101 also encompasses section 58.007 of the Family Code, the relevant language of which reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

³We note the submitted audio recording does not contain personally identifiable information about juveniles, other than the second requestor’s child.

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 8.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). However, any personally identifiable information concerning another juvenile suspect, offender, victim, or witness must be redacted. *Id.* § 58.007(j)(1).

The submitted documents involve juvenile conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. The second requestor is the parent of the juvenile offender; therefore, the information pertaining to the requestor's child may not be withheld under section 552.101 of the Government Code on that ground. *See id.* § 58.007(e). As noted above, the personally identifiable information about the juvenile witnesses who are not the parent's child is confidential under section 261.201(1)(1).

See id. § 58.007(j)(1). However, pursuant to section 58.007(e), the city may not withhold the remaining information from the second requestor under section 552.101 in conjunction with section 58.007(c). *See id.* § 58.007(e). Nevertheless, section 58.007(j)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* §58.007(j)(2); *see also id.* § 261.201(1)(2). Thus, we must address the applicability of MPA to the submitted information as it relates to the second requestor.

Section 159.002 of the MPA provides in part the following:

(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). Medical records must be released upon the patient's signed, written consent, provided 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. *Id.* §§ 159.004, .005. Section 159.002(c) also requires 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). The submitted information contains medical records, which we have marked. Upon review, we find the information we have marked constitutes confidential medical records.

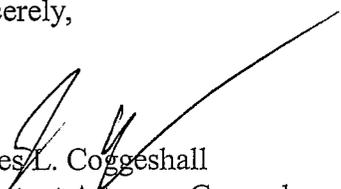
We note medical records involving a minor may be released under the MPA with the parent's or legal guardian's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, 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). As the parent of the child whose medical records are at issue, the second requestor may have a right of access to the marked medical records under the MPA. Occ. Code § 159.005(a)(2). If the second requestor provides proper consent in accordance with the MPA, then the city must release the marked medical records. If the requestor does not provide proper consent, then the city must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.

To conclude, the city may only release the marked medical records in accordance with the MPA. The city must withhold from the first requestor the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold from the second requestor the information we have marked under section 552.101 in conjunction with section 261.201(l) of the Family Code. The city must also withhold from the second requestor the personally identifiable information about the juvenile witnesses who are not children of the second requestor in the submitted video recordings under section 552.101 in conjunction with section 261.201(l)(1). The city must release the remaining information to the second requestor pursuant to sections 58.007(e) and 261.201(k) of the Family Code.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/dls

Ref: ID# 408602

Enc. Submitted documents

c: Requestors
(w/o enclosures)