



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2012.

Mr. Thomas D. McClure
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2012-01819

Dear Mr. McClure:

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# 444550.

The Texas Department of State Health Services (the "department") received requests from two requestors for (1) the personnel records of a named individual, including disciplinary actions against that individual and (2) "a list of all Austin State Hospital staff primarily assigned to work in the facility's Child-Adolescent Psychiatric Services Unit since fiscal year 2001[.]"¹ You state "all releasable information has been or will be made available to the requestor." You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state that the proprietary interests of the Texas Medical Board (the "board") might be implicated. Accordingly, you provided notice to the board of the request and its right to submit arguments to this office explaining why the responsive information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released). We have received comments from the board.

¹We note that the requests at issue were received by the department on November 16, 2011 and November 18, 2011. In response to the request received on November 16, you submitted an earlier request for a ruling to this office, which this office originally assigned ID number 444530. As you note, however, on December 7, 2011, you withdrew this request for a ruling, and this office therefore closed ID number 444530 in response. However, you subsequently informed us that your request to withdraw ID number 444530 was made in error, and you submitted arguments to this office against release of the information in response to both the November 16 and November 18 requests received by the department. Accordingly, although ID number 444530 has been closed by this office, we will address your arguments to withhold the information you have submitted as responsive to both requests under the ID number listed above, and the information at issue must be withheld from, or released to, both requestors in accordance with this ruling.

We have also received comments from the named individual's representative as well as from the City of Austin Police Department (the "police department").² We have considered the exceptions you claim as well as the comments from the interested parties, and have 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. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code. Section 261.201 provides in relevant 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.

Fam. Code § 261.201(a); *see id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). The police department informs us it has been provided copies of the requested disciplinary information. It states this information is contained in the police department's investigation file concerning allegations of alleged or suspected child abuse. The police department asserts the requested disciplinary information consists of records of the investigation of child abuse that the police department is currently conducting pursuant to chapter 261 and, thus, this information is confidential under section 261.201(a). On this basis, we agree the information in Exhibit C is confidential under section 261.201(a). We have no indication that the police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information at issue is confidential pursuant to section 261.201 of the Family Code. Accordingly, the department must withhold the information in Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³

²*See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

You and the board assert Exhibit D is confidential under section 164.007 of the Occupations Code, which is also encompassed by section 552.101. Section 164.007(c) provides:

Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). In this case, you state the information at issue consists of materials that the board provided to the department. The board explains the information at issue was sent to “the personnel/credentialing assistant at the Texas Department of Mental Health and Mental Retardation/Austin State Hospital (“TDMHMR/ASH”) on December 1990, responding to TDMHMR/ASH’s request for investigational information from the Board pertaining to a Board licensee.” Thus, you and the board contend the information at issue consists of investigative information held by the board that is related to a physician license holder. By its terms, section 164.007(c) makes information confidential when in the possession of the board, its employees, or agents. In this instance, however, the information at issue is in the possession of the department. Furthermore, the department is not acting as an employee or agent of the board in maintaining these records. Therefore, we conclude section 164.007(c) does not make the information at issue confidential in this instance. Consequently, the department may not withhold this information under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code. As no further arguments against disclosure have been submitted for this information, the department must release it.

In summary, the department must withhold the information in Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining information must be released.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 444550

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828
(w/o enclosures)

Mr. Antonio Cobos
Sharp & Cobos, L.L.P.
4705 Spicewood Springs Road, Suite 100
Austin, Texas 78759
(w/o enclosures)

Ms. Suzanne Mitchell
Assistant General Counsel
Texas Medical Board
P.O. Box 2018
Austin, Texas 78768-2018
(w/o enclosures)