



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2012

Mr. Tommy L. Coleman
Assistant District Attorney
Williamson County
405 Martin Luther King #1
Georgetown, Texas 78626

OR2012-03331

Dear Mr. Coleman:

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# 447034.

The Williamson County District Attorney's Office (the "district attorney") received a request for ten categories of information related to three specified cases. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portions of the request for information pertaining to two of the specified cases. Although you state the district attorney submitted a representative sample of the requested information, we find the submitted information is not representative of these portions of the request. Accordingly, to the extent any information responsive to these portions of the request existed on the date the district attorney received the request, we assume the district attorney has released it. If the district attorney has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains a court-filed document that is subject to subsection 552.022(a)(17). You seek to withhold the submitted court-filed document under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the submitted court-filed document may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, as section 552.101 of the Government Code can make information confidential for purposes of section 552.022(a)(17), we will consider your remaining argument under this section for the submitted court-filed document.

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 other statutes make confidential. Section 261.201 of the Family Code 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 contend the submitted information is confidential under section 261.201. We find the information at issue was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). We note information may not be withheld on the basis of section 261.201(a) from a parent of a child who was the victim of alleged or suspected abuse, unless the parent is alleged to have committed the abuse. *See id.* § 261.201(k). Although the requestor’s client is a parent of the child victim, the requestor’s client is suspected of committing the alleged child abuse. Therefore, the district attorney must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (addressing predecessor statute).

In this instance, however, the submitted information includes mental health records governed by provisions of chapter 611 of the Health and Safety Code. Section 611.002 provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health and Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). The mental health records we have marked are confidential under section 611.002 of the Health and Safety Code but must be released if the requestor is authorized to obtain the records under sections 611.004 and 611.0045 of the Health and Safety Code. *See* Health and Safety Code § 611.004(a)(4) (professional may disclose confidential information to person who has patient’s written consent).

We further note the file contains fingerprints belonging to the requestor’s client. Fingerprints are governed by chapter 560 of the Government Code, which is also encompassed by

section 552.101 of the Government Code. Section 560.001(1) provides that “[b]iometric identifier’ means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.” Gov’t Code § 560.001(1). Under section 560.003 of the Government Code, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. Section 560.002 states, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Accordingly, we find a person, or the person’s authorized representative, has a right of access under section 560.002(1)(A) to that person’s biometric information. Thus, because the requestor is acting as the authorized representative of his client, he has a right of access to his client’s fingerprints under section 560.002(1)(A).

Although the submitted information is generally confidential under section 261.201 of the Family Code, sections 611.004 and 611.0045 of the Health and Safety Code and section 560.002 of the Government Code may provide the requestor with a right of access to the marked mental health records and fingerprints. Therefore, there is a conflict between section 261.201 of the Family Code and the applicable provisions of chapter 611 of the Health and Safety Code and chapter 560 of the Government Code. 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 id.* § 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 applicable provisions of chapter 611 of the Health and Safety Code and chapter 560 of the Government Code specifically permit the release of mental health records and fingerprints to certain parties and under certain circumstances. Therefore, we conclude that the district attorney must release the marked mental health records to the requestor if the district attorney receives the required authorization for the release of those records under sections 611.004 and 611.0045 of the Health and Safety Code and must release the fingerprints under section 560.002(1)(A) of the Government Code. In that event, the remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the district attorney does not receive the required authorization under sections 611.004 and 611.0045 of the Health and Safety Code, then, with the exception of the submitted fingerprints, which must be released under section 560.002(1)(A) of the Government Code, the district attorney must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 447034

Enc. Submitted documents

c: Requestor
(w/o enclosures)