



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2013

Ms. Michele Freeland  
Legal Assistant  
Office of General Counsel  
Texas Department of Public Safety  
5805 North Lamar Boulevard, Box 4087  
Austin, Texas 78773-0001

OR2013-01362

Dear Ms. Freeland:

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# 476873 (DPS PIR# 12-3644).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified investigation of a named individual. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."<sup>1</sup> Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

[T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); see, e.g., Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

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). Upon review, we find the submitted information is subject to chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, this information is confidential under section 261.201 of the Family Code. However, the requestor is a representative of the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) provides “[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare shall be referred immediately to [DFPS].” *See id.* § 261.105(a). The person suspected of child abuse in the submitted information was responsible for the child victim’s care, custody, or welfare. Accordingly, section 261.105(a) is applicable and the confidentiality of section 261.201(a) does not apply. *See* Attorney General Opinion No. GA-0879 (2011) (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child’s care, custody, or welfare to DFPS). Although you claim the submitted information is excepted under section 552.108 of the Government Code, a specific statutory right of access prevails over section 552.108. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome Act’s general exceptions to disclosure). Therefore, the submitted information may not be withheld from this requestor under section 552.108 of the Government Code.

We note a portion of the submitted information is subject to the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 552.101 also encompasses information protected by the MPA. Section 159.002 of the MPA provides in relevant part the following:

- (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 that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. Upon review, we find some of the submitted information constitutes medical records and information obtained from medical records. Accordingly, this information, which we have indicated, is confidential under the MPA.

Some of the remaining information is also excepted from disclosure under section 552.130 of the Government Code. Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have indicated the motor vehicle record information to which section 552.130 is applicable.

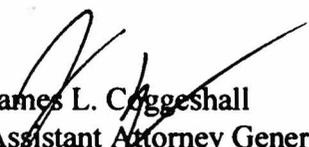
As previously discussed, the requestor has a right of access to the submitted information under section 261.105(a). As also noted above, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* ORDs 613, 451. Section 552.130 of the Government Code has its own access provisions. Therefore, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 261.105 of the

Family Code and the confidentiality provided by the MPA and section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. See *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 261.105(a) generally allows DFPS access to reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare, the MPA specifically protects medical records and section 552.130 specifically protects motor vehicle record information. Therefore, we conclude section 261.105(a) does not provide DFPS access to information subject to the MPA or section 552.130. Thus, the department must withhold the medical records we have indicated under section 552.101 of the Government Code in conjunction with the MPA and the motor vehicle record information we have indicated under section 552.130 of the Government Code. The department must release the remaining information to the requestor pursuant to section 261.105(a) of the Family Code.<sup>2</sup>

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

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<sup>2</sup>Because the requestor has a special right of access to the information being released, the department must again seek a ruling from this office if it receives another request for this information from a different requestor.

Ref: ID# 476873

Enc. Submitted documents

c: Requestor  
(w/o enclosures)