



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2014

Mr. Jonathan Miles
Open Government Attorney
Texas Department of Family and Protective Services
Department Mail Code E611
P.O. Box 149030
Austin, Texas 78714-9030

OR2014-05595

Dear Mr. Miles:

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# 518711 (DFPS ORR No. 01152014T6K).

The Department of Family and Protective Services (the "department") received two requests from two requestors jointly seeking information regarding specified cases involving the requestors. You indicate you have released some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted to this

¹We note the department failed to comply with the procedural requirements of section 552.301 of the Government Code in seeking a ruling from this office. However, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will address the department's arguments under section 552.101 of the Government Code.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

office by the requestors. *See* Gov't Code § 552.304 (interested third party may submit written comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information other statutes make confidential. Section 48.101 of the Human Resources Code provides in pertinent part as follows:

(a) The following information is confidential and not subject to disclosure under [the Act]:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

...

(d) The executive commissioner [of the Texas Health and Human Services Commission (the "commissioner")] shall adopt rules providing for the release, on request, to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

Hum. Res. Code § 48.101(a), (b), (d). You state the submitted information was used or developed in an investigation conducted under chapter 48 of the Human Resources Code. Such information must not be released to the public, except for a purpose consistent with chapter 48 or as provided by a department or investigating state agency rule or federal law. *See id.* § 48.101 (b-g) (permitting release of confidential information only in certain circumstances). Subchapter M of chapter 705 of title 40 of the Texas Administrative Code

was adopted by the commissioner to explain to whom and under what circumstances case records made confidential under section 48.101 may be released. 40 T.A.C. § 705.7101. Section 705.7107 of that subchapter provides in relevant part:

Upon request and to the extent required by state or federal law, [the department] must make case records or portions of case records available after appropriate redactions to the following persons:

...

(3) An alleged or designated perpetrator of abuse, neglect, or exploitation of an [Adult Protective Services (“APS”)] client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator[.]

Id. § 705.7107(3). In this instance, the requestors made their requests to the department jointly and one requestor is listed as an alleged perpetrator in the submitted information. Consequently, section 705.7107(3) provides a right of access, subject to appropriate redactions, to any information that relates to the requestor who is the alleged perpetrator in the report. *See id.* § 705.7107(3). The department must withhold the information that does not relate to the requestor who is listed as the alleged perpetrator under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code.

We note some of the information to which the requestors have a right of access is subject to the Medical Practice Act (the “MPA”), chapter 159 of the Occupations Code, which governs access to medical records and is encompassed by section 552.101 of the Government Code. Section 159.002 of the MPA provides in relevant part:

(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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). Medical records may be disclosed only in accordance with the MPA. *See* Occ. Code §§ 159.002, .004; Open Records Decision Nos. 598, 546 (1990) (because hospital treatment is routinely conducted under supervision

of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). Upon review, we find the information we have marked is confidential under the MPA and must generally be withheld under section 552.101 of the Government Code.

However, as noted above, the requestors in this instance have a statutory right of access under section 705.7107 of title 40 of the Texas Administrative Code to some of the information at issue. Thus, the instant situation presents a conflict between the protection of the MPA and the release provision of section 705.7107 of title 40 of the Texas Administrative Code. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *See* Gov't Code § 311.026; *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).

The MPA specifically makes medical records confidential, while section 705.7107 gives a general right of access to confidential information relating to the alleged perpetrator in an investigation of abuse, neglect or exploitation conducted under chapter 48 of the Human Resources Code. *See* Occ. Code § 159.002(a), (b); 40 T.A.C. § 705.7107(3). Therefore, we find the confidentiality provisions of the MPA are more specific than the access provision of section 705.7107. Accordingly, the department must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA.³

We note, in releasing information pursuant to section 705.7107 of title 40 of the Texas Administrative Code, section 705.7117 provides that the department "must redact case records to remove the name, address, and any other information in the record which reveals the identity of any person as a 'reporter.'" 40 T.A.C. § 705.7117(b). Accordingly, the department must withhold the information you have marked in the remaining information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code and section 705.7117 of title 40 of the Texas Administrative Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must release to the requestors the portions of the remaining information that pertain to the requestor who is listed as the alleged perpetrator, pursuant to section 48.101(d) of the Human Resources Code in conjunction with section 705.7107(3) of title 40 of the Texas Administrative Code. In releasing such information, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction

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

with section 705.7117 of title 40 of the Texas Administrative Code.⁴ The department must withhold the information that does not relate to the requestor who is listed as the alleged perpetrator under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

Ref: ID# 518711

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)

⁴We note the requestors have a special right of access to the information the department is releasing. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.