



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2014

Ms. Renae Mayfield  
Custodian of Records  
Kaufman County Sheriff's Office  
P.O. Box 849  
Kaufman, Texas 75142

OR2014-07598

Dear Ms. Mayfield:

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# 522070.

The Kaufman County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident, including the victim's statutory pseudonym form.<sup>1</sup> You state you have released some information to the requestor. You claim a portion of the submitted 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.

You claim some of the submitted information is subject to section 552.101 of the Government Code. 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

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<sup>1</sup>We note the sheriff's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

protected by other statutes, such as article 57.02 of the Code of Criminal Procedure. Article 57.02(d) provides a completed pseudonym form is confidential and may not be disclosed to any person other than a defendant in the case or the defendant's attorney, except by court order. Crim. Proc. Code art. 57.02(d). The information we marked is a pseudonym form. Therefore, the sheriff's office must generally withhold this form in its entirety under section 552.101 of the Government Code in accordance with article 57.02(d) of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(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.

Occ. Code § 159.002(a)-(c). Information 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. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* Upon review, we find the information we marked constitutes medical records. Accordingly, the sheriff's office must generally withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA.

We note some of the submitted information is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find the sheriff's office must generally withhold the information we marked under section 552.130 of the Government Code.

We note the requestor is a representative of the Office of the Attorney General (the "OAG"). Subchapter B of chapter 56 contains article 56.38 and is the Crime Victims' Compensation Act. Crim. Proc. Code art. 56.31. Article 56.38(d) provides:

On request by the [OAG], . . . a law enforcement agency shall release to the [OAG] all reports, including witness statements and criminal history record information, for the purpose of allowing the [OAG] to determine whether a claimant or victim qualifies for an award and the extent of the qualification.

*Id.* art. 56.38(d). The submitted information pertains to an alleged sexual assault. We understand the victim in the submitted information has filed an application with the Crime Victims' Compensation Program. Thus, the sheriff's office must generally release the submitted information to the requestor pursuant to article 56.38(d) of the Code of Criminal Procedure.

Therefore, because the requestor has a statutory right of access to the submitted information pursuant to article 56.38(d) of the Code of Criminal Procedure, we must address the conflict between the access provided under article 56.38(d) of the Code of Criminal Procedure and the confidentiality provided under article 57.02(d) of the Code of Criminal Procedure, the MPA, and section 552.130 of the Government Code. A statutory right of access generally prevails over the Act's general exceptions to disclosure. *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). Where general and specific provisions 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* Gov't Code § 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.). Article 56.38(d) generally gives the OAG a right of access to all reports it requests to determine the qualification and extent of an award to an individual who has filed an application for crime victim compensation. In contrast, article 57.02(d) of the Code of Criminal Procedure specifically protects pseudonym forms, the MPA specifically protects medical records, and section 552.130 of the Government Code specifically protects motor vehicle record information. Although a specific statutory right of access prevails over general exceptions to disclosure under the Act, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we find the confidentiality provisions of article 57.02(d) of the Code of Criminal Procedure, the MPA, and section 552.130 are more specific than the general right of access provided by article 56.38(d) of the Code of Criminal Procedure. Additionally, although the submitted

information is subject to common law privacy, we note a specific statutory right of access generally prevails over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common-law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with article 57.02(d) of the Code of Criminal Procedure, the information we marked under section 552.101 in conjunction with the MPA, and the information we marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information to the requestor pursuant to article 56.38(d) of the Code of Criminal Procedure.

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](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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 522070

Enc. Submitted documents

c: Requestor  
(w/o enclosures)