



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2014

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

OR2014-08440

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# 522972 (DFPS ORR Request No. 0210201420F).

The Texas Department of Family and Protective Services (the "department") received a request for ten categories of information pertaining to a specified incident, a specified location, and a named individual.<sup>1</sup> You state you have no information responsive to a portion of the request.<sup>2</sup> You claim some of the submitted information is excepted from disclosure

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<sup>1</sup>You state the department 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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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 protected by other statutes, such as section 48.101 of the Human Resources Code, which 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.

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<sup>3</sup>We 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.

Hum. Res. Code § 48.101(a), (b), (d). You inform us the submitted information includes two investigations of abuse or neglect conducted by Adult Protective Services (“APS”) 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:

...

(2) For deceased APS clients:

(A) The legally appointed representative of the deceased APS client’s estate[.]

*Id.* § 705.7107(2)(A). In this instance, you inform us the requestor is not an individual who would have access to report number 42731422. *See* Hum. Res. Code § 48.101(c); 40 T.A.C. §§ 705.7107, .7109. Based on your representations and our review of the records, we agree the department must withhold report number 42731422, which you have marked, under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code. With regard to the remaining information, you inform us the requestor represents the estate of a deceased APS client and alleged victim in the information at issue. Consequently, section 705.7107(2)(A) provides the requestor with a right of access, subject to appropriate redactions, to any of the remaining information that relates to his client as an APS client. *See* 40 T.A.C. § 705.7107(2)(A).

You assert some of the information to which the requestor has 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 agree the information you have marked is confidential under the MPA and must generally be withheld under section 552.101 of the Government Code.

You also assert some of the information to which the requestor has a right of access is subject to section 773.091 of the Health and Safety Code, which pertains to emergency medical service ("EMS") records and is encompassed by section 552.101 of the Government Code. Section 773.091 provides in part the following:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find the information you have marked consists of EMS records subject to chapter 773. Thus, with the exception of the information subject to section 773.091(g), the marked information must generally be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

However, as noted above, the requestor in this instance has a statutory right of access under section 705.7107 of title 40 of the Texas Administrative Code to the submitted information pertaining to his deceased client. Thus, the instant situation presents a conflict between the confidentiality provided by the MPA and section 773.091(b) 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 and section 773.091(b) specifically make medical records and EMS records confidential, while section 705.7107 gives the representative of a deceased APS client's estate a general right of access to records of an investigation of abuse, neglect, or exploitation conducted under chapter 48 of the Human Resources Code. *See* Occ. Code § 159.002(a), (b); Health & Safety Code § 773.091(b); 40 T.A.C. § 705.7107(2)(A). Therefore, we find the confidentiality provisions of the MPA and section 773.091(b) are more specific than the access provision of section 705.7107. Accordingly, the department must withhold the medical records you have marked under section 552.101 of the Government Code in conjunction with the MPA. Furthermore, with the exception of the information subject to section 773.091(g), which is not confidential, the department must withhold the EMS records you have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

We note, in releasing information pursuant to section 705.7107 of title 40 of the Texas Administrative Code, section 705.7117 provides 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 we 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(b) of title 40 of the Texas Administrative Code. However, we find you have not demonstrated how the remaining information you have marked reveals the identity of a reporter for purposes of section 705.7117. Accordingly, the department may not withhold any of the remaining information under section 552.101 on that basis.

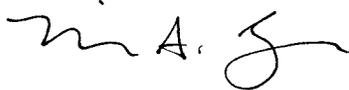
In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with (1) section 48.101 of the Human Resources Code; (2) the MPA; and (3) section 773.091(b) of the Health and Safety Code, with the exception of the information subject to section 773.091(g) of the Health and Safety Code. The department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human

Resources Code and section 705.7117(b) of title 40 of the Texas Administrative Code. The department must release the remaining information.<sup>4</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.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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bhf

Ref: ID# 522972

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the information being released in this instance includes information that may be confidential with respect to the general public. See 40 T.A.C. § 705.7107(2)(A); see also Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).