



January 22, 2015

Ms. Ashley D. Fourt
Assistant District Attorney
Office of the Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2015-01248

Dear Ms. Fourt:

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# 550854.

The Tarrant County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified arrest of a named individual. You claim 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 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." Gov't Code § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

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

¹Although you also raise section 552.101 in conjunction with constitutional privacy for the submitted information, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, .302.

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). We note the submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Thus, we find that the information is generally confidential under section 261.201 of the Family Code. However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). We note that section 773.0612 of the Health and Safety Code constitutes “applicable state law” in this instance.

The requestor in this instance is a representative of the Texas Department of State Health Services (“DSHS”). The requestor has informed the sheriff’s office that DSHS seeks the information pursuant to an investigation of a named individual conducted under chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by DSHS. *See* Health & Safety Code § 773.041 (person may not practice as any type of emergency medical services personnel unless certified by DSHS under chapter 773). Section 773.0612 of the Health and Safety Code provides:

- (a) [DSHS] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification . . . is considered to have given consent to a representative of [DSHS] entering and inspecting a vehicle or place of business in accordance with this chapter.
- (b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the [Texas Board of Health].

Id. § 773.0612. The individual at issue is a certified emergency medical technician. Thus, we find the submitted documents are directly related to emergency medical services personnel for purposes of section 773.0612(a). DSHS states, and provides information reflecting, DSHS intends to use the submitted information for purposes consistent with chapter 773 of the Health and Safety Code. Therefore, we determine the requestor has a statutory right of access to the information under section 773.0612(a) of the Health and Safety Code. Consequently, if the sheriff's office determines that DSHS intends to use the information for purposes consistent with the Family Code, the sheriff's office must generally release the submitted information to the requestor. We note that information obtained by DSHS pursuant to section 773.0612(a) is confidential in the hands of DSHS. *See id.* § 773.0612(b).

If, however, the sheriff's office determines that DSHS does not seek this information for purposes consistent with the Family Code, the sheriff's office must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996), 440 at 2 (1986) (predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information).

In the event the sheriff's office determines that release of the information is consistent with the Family Code, we must nevertheless consider whether the submitted information is otherwise excepted from disclosure. You assert the submitted information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we agree portions of the submitted information are subject to section 552.101 in conjunction with common-law privacy. However, a specific statutory right of access generally prevails over the common law. *See Cash Am. Int'l Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute abrogates common-law principle only when its express terms or necessary implications clearly indicate Legislature's intent to do so and requires clear repugnance between common-law and statutory causes of action); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common-law controls only where there is no conflicting or controlling statutory law). We note the submitted information contains information subject to section 552.137 of the Government Code.² This office has found that a specific statutory right of access also prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 613 at 4 (1993) (exception in Act cannot impinge on statutory right of access to

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

information), 451 at 4 (1986). Because the requestor in this instance has a statutory right of access to the information at issue, the sheriff's office may not withhold this information from the requestor pursuant to section 552.101 of the Government Code in conjunction with common-law privacy or section 552.137 of the Government Code.

You also assert the submitted information is excepted under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code. Section 552.101 also encompasses information protected by other statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides, in 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 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 the information we have marked consists of medical records. Accordingly, the information we have marked is subject to section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information constitutes medical records or information obtained from medical records. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with the MPA.

We note the submitted information contains information subject to sections 560.003 and 552.130 of the Government Code. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *See Gov't Code* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or

otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprint we have marked is subject to section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *Id.* § 552.130. Upon review, we find the motor vehicle record information we have marked is subject to section 552.130 of the Government Code.

If section 773.0612 of the Health and Safety Code applies to the information at issue and release is for a purpose consistent with the Family Code, there is a conflict between the requestor's right of access under section 773.0612 of the Health and Safety Code and the information that is made confidential by the MPA and sections 560.003 and 552.130 of the Government Code. 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 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 773.0612 generally allows DSHS access to information relating to emergency medical services personnel it is investigating, section 159.002 of the MPA specifically protects medical records and section 560.003 of the Government Code specifically protects fingerprints. We therefore conclude that the confidentiality provided by the MPA and section 560.003 of the Government Code is more specific than the general right of access provided under section 773.0612. Further, section 552.130 specifically protects driver's license and motor vehicle record information, and contains its own access provisions governing release of information. Thus, we find the confidentiality provided by section 552.130 is also more specific than the general right of access provided by section 773.0612 of the Health and Safety Code. Accordingly, in the event the requestor has a statutory right of access under section 773.0612 and release is for a purpose consistent with the Family Code, the sheriff's office must withhold the information we have marked pursuant to the MPA and section 560.003 of the Government Code under section 552.101 of the Government Code and the information we have marked under section 552.130 of the Government Code.

In summary, if the sheriff's office determines that DSHS intends to use the submitted information for purposes consistent with the Family Code, the sheriff's office must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA, (2) withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, (3) withhold the information we have marked under section 552.130 of

the Government Code, and (4) release the remaining information to this requestor.³ If the sheriff's office determines that DSHS does not seek the submitted information for purposes consistent with the Family Code, the sheriff's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 550854

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that because the requestor has a special right of access to this information in this instance, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.