



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 9, 2015

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap, Ninth Floor  
Fort Worth, Texas 76196-0201

OR2015-11275

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# 564831.

The Tarrant County Juvenile Services Department (the "department") received a request for all juvenile records pertaining to the requestor's client. You claim 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The records of a juvenile probation department relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(b). *See* Fam. Code § 58.007(b). However, we note section 58.007 is inapplicable in this instance because the records at issue relate to conduct taking place prior to January 1, 1996. Accordingly, we address your argument under former section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court, pertaining to juvenile conduct that occurred before January 1, 1996, were governed by former section 51.14(b), which was continued in effect for that purpose. *See*

Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 of the Family Code provided, in relevant part, as follows:

(b) All files and records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court are open to inspection only by:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution; or
- (5) the Texas Department of Corrections, the Department of Public Safety, and the Texas Juvenile Probation Commission, for the purpose of maintaining statistical records of recidivism, and for diagnosis and classification.

Fam. Code § 51.14(b). Section 51.14 applies only to records of a “child,” which is defined as a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). The records of a juvenile probation department are subject to section 51.14(b). *See* Attorney General Opinion MW-359 at 1-2 (1981). The submitted information consists of juvenile probation records related to juvenile conduct that occurred before January 1, 1996. Therefore, the submitted information is generally confidential under section 51.14(b) of the Family Code. However, section 51.14(b)(3) provides a right of access to an attorney for the child who is the subject of the records. In this instance, the requestor is an attorney for the person whose juvenile probation records are at issue. Accordingly, the requestor has a right of access to the records concerning his client and they may not be withheld from her on the basis of former section 51.14(b) of the Family Code. However, we note portions of the records relate to children who are not the requestor’s client. These portions of the records, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with former section 51.14(b) of the Family Code.

Section 552.101 also encompasses section 611.002 of the Health and Safety Code, which pertains to mental health records. Section 611.002 of the Health and Safety Code provides:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002; *see also id.* § 611.001 (defining “patient” and “professional”). Upon review, we find some of the submitted information consists of mental health records. Thus, the mental health records we have marked are confidential under section 611.002 of the Health and Safety Code.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which pertains to medical records. *See Occ. Code* §§ 151.001-168.202. 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; Open Records Decision No. 598 (1991). 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 have marked is confidential under section 552.101 of the Government Code in conjunction with the MPA.

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. Upon review, we find the motor

vehicle record information we have marked is confidential under section 552.130 of the Government Code.

With respect to the information protected from public disclosure by section 611.002 of the Health and Safety Code, section 159.002 of the MPA, and section 552.130 of the Government Code, we find there is a conflict between these statutes and the right of access afforded the requestor by former section 51.14(b)(3) of the Family Code.<sup>1</sup> 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 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.). In this instance, although section 51.14(b) generally allows the requestor access to her client's juvenile probation records, section 611.002 specifically protects mental health records, section 159.002 specifically protects medical records, and section 552.130 specifically protects motor vehicle record information. We therefore conclude the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 611.022 of the Health and Safety Code, section 552.101 of the Government Code in conjunction with section 159.002 of the MPA, and section 552.130 of the Government Code.<sup>2</sup>

In summary, the department must withhold the information we have marked concerning children other than the requestor's client under section 552.101 of the Government Code in conjunction with former section 51.14(b) of the Family Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Occupations Code. 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 withhold the information we have

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<sup>1</sup>We note a statutory right of access, such as that provided by section 51.14(b)(3), 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) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, section 552.130 contains its own access provisions governing release of information. As such, it is not a general exception to disclosure under the Act. Accordingly, we must address the conflict between the access provided by former section 51.14(b) of the Family Code and the confidentiality provided under section 552.130 of the Government Code.

<sup>2</sup>This ruling does not affect an individual's right of access to a patient's medical records from the physician who provided treatment under the MPA or to a patient's mental health records from the professional who provided treatment under chapter 611 of the Health and Safety Code. *See* Occ. Code §§ 159.004-.006; Health & Safety Code §§ 611.004, .0045; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Public Information Act).

marked under section 552.130 of the Government Code. The remaining information must be released.<sup>3</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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 564831

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>The requestor has a right of access under former section 51.14(b)(3) of the Family Code to the information being released. Because this information would be confidential with respect to the general public, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.