



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2004

Mr. Lance Beversdorff
Texas Youth Commission
P. O. Box 4260
Austin, Texas 78765

OR2004-5596

Dear Mr Beversdorff:

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# 204698.

The Texas Youth Commission (the "commission") received a request for all records in the commission's possession related to a named deceased inmate. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

We first consider your claim that section 552.101 of the Government Code is applicable to the submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 61.073 of the Human Resources Code provides as follows:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records and all other information concerning a child, including personally identifiable information, are not public and are

available only according to the provisions of Section 58.005, Family Code, Section 61.0731, Human Resources Code, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 61.073.¹ In addition, section 61.0731 of the Human Resources Code, provides as follows:

(a) In the interest of achieving the purpose of the commission and protecting the public, the commission may disclose records and other information concerning a child to the child and the child's parent or guardian only if disclosure would not materially harm the treatment and rehabilitation of the child and would not substantially decrease the likelihood of the commission receiving information from the same or similar sources in the future. Information concerning a person who is age 18 or older may not be disclosed to the person's parent or guardian without the person's consent.

(b) The commission may disclose information regarding a child's location and committing court to a person having a legitimate need for this information.

Id. § 61.0731. Based on your representations and our review of the submitted information, we find that this information is encompassed by section 61.073. We note that the requestor states that he is an attorney representing the deceased youth's parent. Section 61.0731(a) provides for permissive release to the child's parent or guardian. Accordingly, we conclude that the submitted information is generally excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code, but may be released to the requestor if the commission determines that release in this case is permitted under section 61.0731.

However, we note that portions of the submitted information consist of records of the deceased youth's psychiatric counseling and treatment, as well as his medical and dental records. Further, the submitted information contains a custodial death report. We recognize that section 61.073 encompasses these submitted records of examination and treatment in general. We note, however, that these records are specifically addressed by other statutes.

¹Section 61.093(c) of the Human Resources Code authorizes the disclosure of information relating to a child who has escaped from custody. Section 58.005(a) of the Family Code provides that information obtained for the purpose of diagnosis, examination, evaluation, or treatment of a child by an agency providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to certain specified persons or under certain specified circumstances. Chapter 61 of the Code of Criminal Procedure is applicable to information that pertains to criminal combinations and street gangs. None of the submitted information appears to be subject to section 61.093 of the Human Resources Code, section 58.005(a) of the Family Code, or chapter 61 of the Code of Criminal Procedure.

Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See 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); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).

Chapter 611 of the Health and Safety Code specifically addresses the public availability of mental health records. Accordingly, we will address the mental health records at issue under chapter 611 of the Health and Safety Code. Section 611.002 of the Health & Safety Code provides in pertinent part:

(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.

Under section 611.001, a “professional” is (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. A portion of the submitted information consists of records of the identity, diagnosis, evaluation, or treatment of a patient that are confidential with respect to the general public and may only be disclosed as provided under sections 611.004 and 611.0045 of the Health and Safety Code.

Section 611.0045 states in pertinent part:

(a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

....

(f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient’s behalf.

Health & Safety Code § 611.0045(a), (f). Section 611.004(a)(4) and (5) provide in turn:

(a) A professional may disclose confidential information only:

....

(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs[.]

Health & Safety Code § 611.004(a)(4). In this case, the records at issue relate to a patient who was a minor at the time of his death. We have marked the information in the submitted documents that is within the scope of section 611.002 and may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

We further note that the submitted information contains medical records, access to which is specifically addressed by the Medical Practice Act, (the "MPA"), chapter 159 of the Occupations Code. Open Records Decision No. 565 at 7 (1990). Section 159.002 of the MPA provides in pertinent 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). We have determined that the MPA ordinarily encompasses only records created either by a physician or by someone acting under the supervision of a physician. See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). As the patient was a minor at the time of his death, the medical records may be released only on the signed consent of the parent or legal guardian of the patient. Occ. Code § 159.005(a)(2). That consent must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. We have marked the documents that consist of medical records and are therefore subject to the MPA. This information may be released only in accordance with the MPA.²

Next, we note that the submitted documents also contain dental records, access to which is specifically addressed by section 258.104 of the Occupations Code. Section 258.102 of the Occupations Code provides as follows:

²We note that the requestor has submitted to the commission an authorization for release of medical records signed by his client, the mother of the deceased youth, and you have provided a copy of the authorization for our review.

(a) The following information is privileged and may not be disclosed except as provided by this article:

- (1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and
- (2) a dental record.

(b) The privilege described by this section applies regardless of when the patient received the professional service from the dentist.

Occ. Code § 258.102. A "dental record" means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. *See id.* § 258.101(1). Information that is privileged under chapter 258 of the Occupations Code may be disclosed only under certain specified circumstances. *See id.* § 258.104 (consent to disclosure); *see also id.* §§ 258.105, .106, .107 (exceptions to privilege). When the patient is minor, consent for the release of privileged information must be signed by a parent or legal guardian of the patient. *See id.* § 258.104(b)(2). The written consent for the release of privileged information required under section 258.104 must specify (1) the information covered by the release, (2) the person to whom the information is to be released, and (3) the purpose for the release. *Id.* § 258.104(c). A person who receives information that is privileged under section 258.102 of the Occupations Code may disclose that information to another person only to the extent that disclosure is consistent with the purpose for which the information was obtained. *See id.* § 258.108. The marked dental records may only be released in accordance with chapter 258 of the Occupations Code.

Finally, we note that the submitted documents contain a custodial death report. Access to custodial death reports are specifically addressed by article 49.18(b) of the Code of Criminal Procedure. In Open Records Decision No. 521 at 5 (1989), this office concluded that under article 49.18(b), in conjunction with a directive issued by the attorney general, section one of a custodial death report filed with this office is public information, but sections two through five of the report are confidential. *See Code Crim. Proc. art. 49.18(b)* (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). Accordingly, the commission must release section one of the custodial death report to the requestor. However, because sections two through five of the report are deemed confidential under article 49.18(b), the commission must not release the remaining portions of this report to the requestor.

In summary, the mental health records may be released only in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The medical records may only be released in accordance with the access provisions of the MPA. The dental records may only be released in accordance with chapter 258 of the Occupations Code. The commission must release section one of the custodial death report to the requestor pursuant

to article 49.18(b) of the Code of Criminal Procedure. The remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code. Because we have resolved this issue under section 552.101, we need not address your remaining claimed exception to disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/krl

Ref: ID# 204698

Enc. Submitted documents

c: Mr. Steve L. Moody
Attorney at Law
1921 Austin Avenue
Waco, Texas 76701
(w/o enclosures)