



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2006

Mr. John T. Patterson
Assistant City Attorney
Legal Services
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2006-05566

Dear Mr. Patterson:

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# 250062.

The Waco Police Department (the "department") received a request for all information pertaining to the sexual assault of a named child. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that portions of the requested information constitute medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that 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).

Section 159.002(c) requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The MPA permits disclosure of MPA records to the patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Occ. Code §§ 159.003, .004, .005. Here, the requestor has been appointed guardian ad litem for the individual whose medical records are at issue. Thus, the department may only release the submitted medical records in accordance with the MPA. Open Records Decision No. 598 (1991).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for 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). Because the remaining information consists of files, reports, records, communications, or working papers used or developed in an investigation under

chapter 261, this information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. However, section 261.201 also provides that information encompassed by subsection (a) may be released to certain persons and entities under limited circumstances. *See* Fam. Code § 261.201.

Generally, a governmental body such as the department may transfer information to another governmental body subject to the Act without violating the confidentiality of the information or waiving exceptions to disclosure. *See* Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Open Records Decision No. 661 at 3 (1991). However, where a confidentiality statute such as chapter 261 of the Family Code enumerates specific entities to which the release of confidential information is authorized and where the potential receiving governmental body is not among the statute's enumerated entities, the interagency transfer of that information is prohibited. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer prohibited), JM-590 at 4-5 (1986) (same); *see also* Open Records Decision Nos. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). We note that the department received the request for information from Court Appointed Special Advocates for the Cross Timbers Area, Inc. ("CASA"). The requestor does not fall within any category of persons or entities under section 261.201 that are authorized to receive this ordinarily confidential information. *See* Fam. Code § 261.201(b)-(g) (listing entities that are authorized to receive 261.201 information).

Furthermore, the submitted court order does not give CASA, as guardian ad litem, a right of access to the information at issue. The Order Appointing Guardian Ad Litem states, in pertinent part, "the guardian ad litem shall have access to the medical, dental, educational, psychiatric, and mental health records of the child to the same extent as a parent or managing conservator, including inspecting and copying any records and consulting with any provider of services to the child." Accordingly, the remaining information is confidential under section 261.201(a) of the Family Code and, thus, is excepted from disclosure pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor to section 261.201).¹

¹We note that if the investigation has been referred to the Department of Family and Protective Services (the "DFPS"), a parent or other legal representative of a child who is a requestor may be entitled to access to the DFPS's records. Section 261.201(g) of the Family Code provides that the DFPS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

In summary, the department may only release the submitted medical records in accordance with the MPA. The remaining submitted information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Anne Prentice
Assistant Attorney General
Open Records Division

AP/eb

Ref: ID# 250062

Enc. Submitted documents

c: Ms. Alana Hefner
Program Director
CASA for the Cross Timbers Area, Inc
P.O. Box 1181
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(w/o enclosures)