



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2009

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2009-07359

Dear Ms. Quinn:

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# 345424 (Reference No. 09-096).

The Cedar Park Police Department (the "department") received a request for information involving the requestor, his child, and a specified time interval. You inform us that some of the requested information is encompassed by previous open records letter rulings. You also state that social security numbers either have been or will be redacted pursuant to section 552.147 of the Government Code.¹ You claim that other responsive 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 information you submitted.

You state that some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2007-11384 (2007) and 2007-15269 (2007). In those rulings, we concluded that the information encompassed by the previous requests is confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, and section 261.201 of the Family Code. You do not indicate that there has been any change in the law, facts, and

¹Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

circumstances on which those rulings are based. We therefore conclude that the department may continue to rely on Open Records Letter Nos. 2007-11384 and 2007-15269 with respect to the submitted information that is encompassed by those rulings.² See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, we address your claim under section 552.101 of the Government Code for the remaining information at issue.³ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). We find that the remaining information at issue consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. As such, this information falls within the scope of section 261.201(a). As you do not indicate that the department has adopted a rule that governs the release of this type of

²As we are able to make this determination, we need not address your arguments against disclosure of the information that is encompassed by Open Records Letter Nos. 2007-11384 and 2007-15269.

³We note that the remaining information at issue includes information that you previously submitted to this office in connection with our ruling in Open Records Letter No. 2007-11384. That information, which is included in the records that you have submitted as Exhibit B, was not responsive to the request for information that resulted in Open Records Letter No. 2007-11384 because it did not fall within the time interval specified by the request. Accordingly, the previous ruling does not address the public availability of that information. The information in question is responsive to the instant request, however, and therefore we will address its public availability.

information, we assume that no such rule exists. Given that assumption, we conclude that the remaining information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing statutory predecessor).⁴

We note, however, that the remaining information includes medical records that are governed by the MPA. Section 159.002 of the MPA provides in 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). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). In this instance, the medical records at issue involve the requestor's child. Medical records involving a minor may only be released on the parent's or legal guardian's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, 159.005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked medical records that are confidential under section 159.002 of the MPA but must be released if the department receives the required written consent for release under sections 159.004 and 159.005 of the MPA.

We also note that the remaining information includes mental health records that are governed by provisions of chapter 611 of the Health and Safety Code. Section 611.002 provides in 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.

⁴We note that because section 261.201(a) protects all "files, reports, records, communications, audiotapes, videotapes, and working papers" related to an investigation of alleged child abuse, the department must not release basic front-page offense report information in such cases.

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

Health and Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). We have marked mental health records that are confidential under section 611.002 of the Health and Safety Code but must be released if the requestor is authorized to obtain those records under sections 611.004 and 611.0045 of the Health and Safety Code. *See* Health and Safety Code § 611.004(a)(4) (professional may disclose confidential information to person who has patient’s written consent or to parent of minor patient).

Thus, although the remaining information at issue is generally confidential under section 261.201 of the Family Code, the MPA and sections 611.004 and 611.0045 of the Health and Safety Code may provide the requestor with a right of access to the marked medical and mental health records. Therefore, there is a conflict between section 261.201 of the Family Code and the applicable provisions of the MPA and chapter 611 of the Health and Safety Code. Where general and specific statutes 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* 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 261.201 generally makes records of alleged child abuse or neglect confidential, the applicable provisions of the MPA and chapter 611 of the Health and Safety Code specifically permit the release of medical and mental health records to certain parties and under certain circumstances. Therefore, notwithstanding the provisions of section 261.201 of the Family Code, we conclude that department must release the marked medical and mental health records to the requestor if it receives the required authorization for the release of those records under sections 159.004 and 159.005 of the MPA and sections 611.004 and 611.0045 of the Health and Safety Code. In that event, the remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department does not receive the required authorization for release of the medical and mental health records, then the department must withhold all of the remaining information under section 552.101 in conjunction with section 261.201.

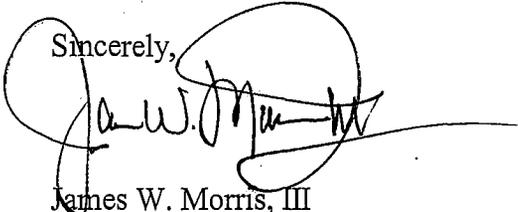
In summary: (1) the department may continue to rely on Open Records Letter Nos. 2007-11384 and 2007-15269 with respect to the submitted information that is encompassed by those rulings; (2) if the department receives the required authorization for release of the marked medical and mental health records under sections 159.004 and 159.005 of the MPA and sections 611.004 and 611.0045 of the Health and Safety Code, then the department must release the medical and mental health records and withhold the remaining

information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; and (3) if the department does not receive the required authorization for release of the medical and mental health records, then the department must withhold all of the remaining information under section 552.101 in conjunction with section 261.201.⁵ As we are able to make these determinations, we need not address your other arguments against disclosure.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 345424

Enc: Submitted information

c: Requestor
(w/o enclosures)

⁵We note that a parent or legal representative of a child who is the subject of reported abuse or neglect may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that 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 [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. See Fam. Code § 261.201(g).