



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2009

Mr. John D. Lestock
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2009-14164

Dear Mr. Lestock:

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# 357531.

The Paris Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001-165.160. Section 159.002 of the MPA provides:

(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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

Id. § 159.002(b), (c). Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (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. *See id.* §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). We have marked a medical record that may only be released in accordance with the MPA.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the remaining information pertains to a closed criminal case that did not result in conviction or deferred adjudication. Based on your representations and our review, we conclude that section 552.108(a)(2) is generally applicable to the information at issue.

However, we note that the requestor identifies herself as a senior investigator for the Texas Medical Board (the "board"). Section 153.006 of the Occupations Code provides in part that "[t]he board may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant." Occ. Code § 153.006(a). In this instance, the information to which the board seeks access pertains to a physician. Thus, the board's statutory right of access to a licensed physician's criminal records under section 153.006 prevails over the general exceptions to disclosure under the Act, such as section 552.108 of the Government Code. *See* Open Records Decision No. 451 at 4 (1986). We therefore conclude that the board generally has a right of access to the submitted information under section 153.006 of the Occupations Code. *See* Open Records Decision No. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information).

However, as noted above, a portion of the submitted information is governed by the MPA. Section 153.006 does not specifically grant the board access to information subject to the MPA. We further note that the MPA has its own access provisions that govern the release

of medical records. *See* Occ. Code §§ 159.004, .005. Generally, if a statute specifically authorizes release of information under certain circumstances or to particular entities, then such information may only be released or transferred in accordance with that statute. *See* Attorney General Opinions GA-0055 (2003) at 3-4 (SBEC not entitled to access teacher appraisals made confidential by section 21.355 of the Education Code where section 21.352 of the Education Code expressly authorizes limited release of appraisals), DM-353 at 4-5 n.6 (1995) (detailed provisions in state law for disclosure of records would not permit disclosure “to other governmental entities and officials . . . without violating the record’s confidentiality”), JM-590 at 5 (1986) (“express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others”); Open Records Decision No. 655 (1997) (because statute permitted Department of Public Safety to transfer confidential criminal history information only to certain entities for certain purposes, county could not obtain information from the department regarding applicants for county employment).

Moreover, 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 153.006 of the Occupations Code generally allows the board access to criminal record reports regarding a license holder or license applicant, the MPA specifically protects medical records, and specifically permits release in certain circumstances that do not include the board’s request in this instance. Additionally, section 153.006 and section 159.002 of the Occupations Code were enacted by the same bill and there is no clear evidence that the legislature intended section 153.006 to prevail. *See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7, 31 (enacting statutory predecessors to Occ. Code §§ 153.006, 159.002). We therefore conclude that, notwithstanding section 153.006, the submitted medical record may only be released in accordance with the MPA. *See also* Open Records Decision No. 629 (1994) (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission). However, the department must release the rest of the submitted information pursuant to section 153.006 of the Occupations Code.²

²Should the department receive another request for this same information from a person who would not have a right of access to the information, the department should re-submit this information and request another decision. *See* Gov’t Code §§ 552.301(a), .302.

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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/eeg

Ref: ID# 357531

Enc. Submitted documents

cc: Requestor
(w/o enclosures)