



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 11, 2010

Ms. Vivian J. Harvey  
Assistant County Attorney  
Henderson County Courthouse  
100 East Tyler Street  
Athens, Texas 75751

OR2010-02149

Dear Ms. Harvey:

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# 369959.

The Henderson County Sheriff's Department (the "sheriff") received a request for all information pertaining to case number C09-40465. You claim the submitted incident report and supporting information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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 protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The submitted information was used or developed in an investigation by the sheriff of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). Thus, we find the submitted information is generally confidential under section 261.201 of the Family Code.

However, the submitted information reflects the requestor may be the child's legal guardian, who is not alleged to have committed the suspected abuse. If the sheriff determines the requestor is the child's legal guardian for purposes of section 261.201, the sheriff may not use section 261.201(a) to withhold this information from this requestor. *Id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). We note the submitted information contains records that may be subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Furthermore, you assert that, if the submitted information may not be withheld under section 261.201, the information is excepted from public disclosure under common-law privacy and 552.108 of the Government Code. Accordingly, if the sheriff determines the requestor is the child's legal guardian, we will consider the applicability of the MPA, common-law privacy, and section 552.108 to the submitted information.

Medical records are governed under the MPA, which is also encompassed by section 552.101 of the Government Code. Section 159.002 of the MPA provides, in 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.

*Id.* § 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). We note medical records involving a minor may be released under the MPA with the parent's or legal guardian's signed, written consent, provided 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. Occ. Code §§ 159.004, .005.

We have marked physical evaluation records of the child at issue that constitute confidential medical records. As previously noted, the requestor may be the child's legal guardian. As such, the requestor may have a right of access to the marked medical records under the MPA. *See id.* § 159.005(a)(2). If the requestor provides proper consent in accordance with the MPA, the marked medical records must be released because a statutory right of access prevails over a claim under common-law privacy and section 552.108 of the Government Code. *See Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (when statute directly conflicts with common law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common law principle); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If the requestor does not provide proper consent, the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The courts and this office have recognized victims of sexual assault have certain common-law privacy interests. *See* 540 S.W.2d 668; *see also* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). If the requestor is the child's legal guardian, she has a special right of access to information that would ordinarily be withheld to protect the child's common-law privacy interests. Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect that person's privacy interests). Therefore, none of the remaining information may be withheld from this requestor on the basis of common-law privacy.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Pruitt*, 551 S.W.2d 706. You state the remaining information pertains to a pending criminal investigation. Based on this representation and our review, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, you may withhold the remaining information under section 552.108(a)(1) of the Government Code.

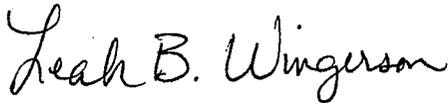
However, if the sheriff determines the requestor is not the child's legal guardian for purposes of section 261.201, then, as previously stated, the submitted information is generally confidential under section 261.201(a) of the Family Code. But, as also previously stated, the marked medical records are governed by the MPA, which may grant the requestor a right of access to the marked medical records. 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 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 confidential, the MPA specifically permits release of medical records to certain parties and in certain circumstances, as noted above. Therefore, notwithstanding the provisions of section 261.201, if the sheriff receives consent from the requestor that complies with the MPA, the sheriff must release the marked medical records to the requestor. The remaining information must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. However, if the sheriff does not receive consent that complies with the MPA, the sheriff must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA and withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, if the sheriff determines the requestor is the child's legal guardian for purposes of section 261.201 of the Family Code, the marked medical records must be released or withheld in accordance with the MPA and, with the exception of basic information, the remaining information may be withheld under section 552.108(a)(1) of the Government Code. If the sheriff determines the requestor is not the child's legal guardian for purposes of section 261.201 of the Family Code, the marked medical records must be released or withheld in accordance with the MPA and the remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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\\_or1.php](http://www.oag.state.tx.us/open/index_or1.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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 369959

Enc. Submitted documents

c: Requestor  
(w/o enclosures)