



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2010

Mr. James Mu
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2010-09329

Dear Mr. Mu:

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# 383987.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a named individual. You state that some of the requested information either has been or will be released. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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 that other statutes make confidential. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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). Medical records must be released on 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* Occ. Code §§ 159.004, .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 must be withheld from the requestor under section 159.002 of the MPA, unless the department receives the required written consent for release under sections 159.004 and 159.005 of the MPA. *See* Open Records Decision No. 598 (1991).

Section 552.101 of the Government Code also encompasses section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

- (1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;
- (2) a releasee; or
- (3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313(a); *see id.* § 508.001(9) ("releasee" means person released on parole or to mandatory supervision). You indicate that the rest of the submitted information is maintained by the department's parole division and is related to a releasee. You do not indicate that the requestor is authorized to obtain the information in question under section 508.313(c). *See id.* § 508.313(c)-(d).¹ Likewise, you do not indicate that any of the information in question is subject to chapter 62 of the Code of Criminal Procedure. *See id.*

¹Section 503.313(c) provides for the release of information encompassed by section 508.313(a) to the governor, a member of the board of pardons and paroles or a parole commissioner, the criminal justice policy council, or an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose. Section 508.313(d) provides that "eligible entity" means a government agency, an organization with which the Department of Criminal Justice contracts or an organization to which the department provides a grant, or an organization to which inmates are referred for services by the department.

§ 508.313(e).² Based on your representations and our review of the information at issue, we therefore conclude that the rest of the submitted information is generally confidential under section 508.313 of the Government Code.

We note, however, that section 508.313 is explicitly made subject to section 552.029 of the Government Code. *See id.* § 508.313(f). Section 552.029 provides in part:

Notwithstanding Section 508.313 or 552.134 [of the Government Code], the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). Thus, basic information regarding an alleged crime involving an inmate is subject to required disclosure under section 552.029. Basic information includes the time and place of the incident, the names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Thus, to the extent that the submitted information consists of alleged crimes involving the releasee, the department must release basic information about all such incidents pursuant to section 552.029(8) of the Government Code. The department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.³

We note that one of the incidents involving the releasee was an alleged sexual assault of a child. Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in 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

²Section 508.313(e) provides that section 508.313 does not apply to information relating to a sex offender that is authorized for release under chapter 62 of the Code of Criminal Procedure.

³As we are able to make this determination, we need not address the department's claim under section 552.134 of the Government Code.

(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). We have marked information relating to the alleged sexual assault that was used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of Fam. Code ch. 261). As you do not indicate that the investigating agency has adopted a rule that governs the release of that type of information, we assume that no such rule exists. Given that assumption, we conclude that the marked information is confidential in its entirety under section 261.201(a). *See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).* Therefore, in releasing basic information under section 552.029(8) of the Government Code, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We also note that some of the remaining information identifies the victim of the alleged sexual assault. Although section 261.201 of the Family Code is not applicable to that information, the identity of an alleged sexual assault victim is protected by common-law privacy under section 552.101 of the Government Code.⁴ *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976); *Open Records Decision Nos. 393 (1983), 339 (1982).* Thus, in releasing basic information under section 552.029(8), the department must withhold the information we have marked that identifies the alleged sexual assault victim under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary: (1) the marked medical records must be withheld under section 159.002 of the MPA, unless the department receives the required written consent for release under sections 159.004 and 159.005 of the MPA; (2) the rest of the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code, except for the basic information that must be released under section 552.029(8) of the Government Code, and (3) in releasing basic information under section 552.029, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and common-law privacy.

⁴Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found.*, 540 S.W.2d at 685.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal flourish extending to the right.

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

JWM/tp

Ref: ID# 383987

Enc: Submitted documents

c: Requestor
(w/o enclosures)