



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2010

Ms. Melanie Barton
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2010-09919

Dear Ms. Barton:

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# 385541.

The Dallas County Juvenile Department (the "county") received two requests for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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, other than the [Department of Family and Protective Services] or the Texas Youth Commission, 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). You state that the information at issue concerns the county's investigation into an allegation of child abuse. *See id.* § 261.401(a) (defining "abuse" for purposes of subchapter E of chapter 261 of the Family Code). Upon review of your arguments and the information at issue, we conclude that the submitted information consists of files, reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code. Accordingly, we find the submitted information is generally confidential under section 261.201 of the Family Code. However, we note the April 23 requestor is the mother of the child victim listed in the submitted information, and she is not alleged to have committed the suspected abuse. Accordingly, the county may not withhold the submitted information from the child's mother under section 261.201(a). *Id.* § 261.201(k). The May 17 requestor, however, is not one of the

individuals who is authorized to receive access to the submitted information; therefore, the county must withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Although the county may not use section 261.201(a) to withhold the report from the April 23 requestor, we note section 261.201(l)(1) of the Family Code provides that before a parent can copy and inspect a record of a child under 261.201(k), any personally identifiable information about a victim or witness under 18 years of age who is not the parent's child must be redacted. *Id.* § 261.201(l)(1). Therefore, the county must withhold the information we have marked under section 261.201(l)(1). Additionally, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You assert the submitted information is otherwise subject to section 552.101 of the Government Code. Accordingly, we will consider the applicability of section 552.101 to the submitted information.

You indicate the release of the submitted information is governed by section 349.59 of chapter 37 of the Texas Administrative Code. However, we note that section 349.59 has been repealed. *See* 35 Tex. Reg. 1036 (2010). Thus, we understand you to claim its successor statute, section 349.520, is applicable to the submitted information. Section 349.520 provides that the Juvenile Probation Commission (the "commission") may provide access to the commission's Notice of Disposition and investigation records made confidential under section 261.201(a) under certain circumstances. *See* 37 T.A.C. § 349.520(a)-(g). However, section 349.520 only applies to records maintained by the commission. *See id.* § 349.520(a). In this instance, we note the information at issue is maintained by the county; thus, section 349.520 is inapplicable in this instance.

Next, you assert section 264.613 of the Family Code is applicable to the submitted information. Section 552.101 of the Government Code encompasses section 264.613 of the Family Code, which pertains to court-appointed volunteer advocate programs that provide children's advocacy services and states:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this subchapter.

(b) Information described by Subsection (a) may be disclosed to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families;

(2) the attorney for the child who is the subject of the information; and

(3) eligible children's advocacy centers.

(c) Information related to the investigation of a report of abuse or neglect of a child under Chapter 261 and services provided as a result of the investigation are confidential as provided by Section 261.201.

Fam. Code § 264.613. Upon review, we note the submitted information pertains to an incident that occurred in a juvenile detention facility. You have not explained, nor is it apparent from the submitted information, how the information at issue pertains to a court-appointed volunteer advocate program for purposes of subchapter G of chapter 264 of the Family Code. *See id.* § 264.601(2) (defining volunteer advocate program). Thus, you have failed to demonstrate the information at issue consists of files, reports, records, communications, or working papers used or developed in providing services under subchapter G, and none of it may be withheld under section 552.101 on that basis.

We note section 552.101 also encompasses 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). Information that is 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 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). We note medical records involving a minor may be released under the MPA 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, .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). Thus, we have marked a portion of the submitted information that is subject to the MPA, and the county must withhold this information unless

the county receives written consent for its release that complies with sections 159.004 and 159.005 of the MPA.

In summary, the county must withhold the submitted information from the May 17 requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The county must withhold the information we have marked under section 261.201(l)(1) of the Family Code from the April 23 requestor and may only release the information we have marked under the MPA in accordance with the provisions of that section. The county must release the remaining information to the April 23 requestor.¹

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 385541

Enc. Submitted documents

c: Requestors
(w/o enclosures)

¹This information contains confidential information regarding the alleged child victim that one of the requestors may obtain as the child's parent. See Fam. Code § 261.201(k). Accordingly, if the county receives another request for this particular information from a different requestor, then the county should again seek a decision from this office.