



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2010

Ms. Bonnie Lee Goldstein
P.O. Box 140940
Dallas, Texas 75214-0940

OR2010-17446

Dear Ms. Goldstein:

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# 400205.

The City of Jacksboro (the "city"), which you represent, received a request for police reports filed by the requestor or another named individual during a specified time period. You state the city will release some information to the requestor. You state the city will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive because it is not within the time period the requestor specified in the request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note the information pertaining to report numbers 10-0000156 and 10-0000246 contains medical records governed 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:

¹Section 552.147(b) of the Government Code 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. See Gov't Code § 552.147(b).

(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 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 have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). 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 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.

Although you assert report number 10-0000156 is confidential under section 261.201 of the Family Code and report number 10-0000246 is confidential under section 58.007 of the Family Code, the MPA may provide the requestor with a right of access to the portions of this information consisting of medical records. Therefore, there is a conflict between the provisions of sections 58.007 and 261.201 of the Family Code and the MPA. 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 58.007 generally makes records of juvenile conduct confidential, and section 261.201(a) generally makes records of alleged child neglect confidential, the MPA specifically permits release of medical records to certain parties and in certain circumstances. Accordingly, the MPA prevails over sections 58.007 and 261.201. Additionally, although you also claim the medical records are excepted under section 552.108, the MPA prevails over the general exceptions to disclosure found in the Act. *See* Open Records Decision No. 451 at 4 (1986). Accordingly, the city may not withhold the medical records under section 552.108. Thus, the city must release or withhold the medical records in accordance with the MPA.

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 information protected by other statutes, such as section 58.007 of the Family Code, which provides in part the following:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

....

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of section 58.007). Section 58.007(c)

is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of section 58.007). Upon review, we find report numbers 10-0000210, 10-0000246 and 10-0000344 involve allegations of a juvenile engaged in delinquent conduct occurring after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, report numbers 10-0000210, 10-0000246, and 10-0000344 are generally subject to section 58.007(c) of the Family Code. Therefore, the city must withhold the remaining information in report number 10-0000246 and report number 10-0000344 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We note, however, the submitted information indicates the requestor is the stepparent of the juvenile suspect listed in report number 10-0000210. We are unable to determine whether the requestor is the juvenile's legal guardian, so as to have a right to inspect law enforcement records concerning the juvenile pursuant to section 58.007(e). *See id.* § 58.007(e). Therefore, we must rule conditionally. Accordingly, if the requestor is not the juvenile suspect's legal guardian, then the city must withhold report number 10-0000210 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the city determines the requestor is the legal guardian of the juvenile, then pursuant to section 58.007(e), the city may not withhold report number 10-0000210 under section 552.101 in conjunction with section 58.007(c). *See id.* § 58.007(e). Nevertheless, because you also assert that the submitted information is excepted under section 552.108 of the Government Code, we must address whether the information at issue is excepted under that section. *See id.* § 58.007(j)(2). Further, we find report number 10-0000072 does not involve delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007(c). Therefore, report number 10-0000072 is not subject to section 58.007(c), and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in part the following:

(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 [Texas 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:

...

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

Fam. Code § 261.201(a), (k), (l). We note report number 10-0000156 concerns alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as a person younger than 17 years of age). Upon review, we find the remaining information in report number 10-0000156 falls within the scope of section 261.201. We note, however, the requestor is the stepparent of the child victim listed in the report, and the stepparent is not alleged to have committed the alleged abuse. As such, this requestor may have a right of access to this report pursuant to section 261.201(k). Because it is unclear whether the requestor is the managing conservator or other legal representative of the child victim, we must rule conditionally. If the requestor is not the managing conservator or other legal representative of the child victim listed in report number 10-0000156, then the city must withhold the remaining information pertaining to report number 10-0000156 under section 552.101 of the Government Code in conjunction with section 261.201(a).² However,

²In the instance the requestor is not the managing conservator or other legal representative of the child whose information is at issue, our ruling is dispositive, and we need not address your remaining arguments against disclosure of this information.

if the requestor is the managing conservator or other legal representative of the child victim, pursuant to section 261.201(k), the city may not use section 261.201(a) to withhold the remaining information pertaining to report number 10-0000156 from this requestor. Fam. Code § 261.201(k). Although you assert report number 10-0000156 is also confidential under common-law privacy, as previously noted, the requestor may be the child victim's legal representative with a special right of access to information that would ordinarily be withheld to protect the victim's common-law privacy interests.³ See Gov't Code § 552.023(a) ("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 that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, section 261.201(1)(2) states that before a parent may inspect or copy a record concerning the child, any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider whether the remaining information pertaining to report number 10-0000156 is excepted from disclosure under the Act.

You claim the remaining responsive information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) 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).

You provide an affidavit from an attorney representing the city stating report number 10-0000156 relates to a criminal case pending with the district attorney's office. Based on this representation and our review of the information at issue, we conclude the release of this 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 present in active cases). Thus, section 552.108(a)(1) is applicable to the remaining information relating to report number 10-

³Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy.

0000156. You provide affidavits from an attorney representing the city stating the remaining responsive information relates to closed criminal investigations that did not result in conviction or deferred adjudication. Based on your representation and our review of the information at issue, we conclude section 552.108(a)(2) is applicable to the remaining responsive information.

We note, and you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such 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 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the city may withhold the information relating to report number 10-0000156 under section 552.108(a)(1) of the Government Code and the remaining responsive information under section 552.108(a)(2) of the Government Code.⁴

In summary, the city must release or withhold the medical records we have marked in accordance with the MPA. The city must withhold the remaining information in report number 10-0000246 and report number 10-0000344 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the requestor is not the legal representative of the juvenile suspect listed in report number 10-0000210, the city must also withhold that report in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the requestor is not the legal representative of the child victim listed in report number 10-0000156, the city must withhold the remaining information relating to that report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor has a right of access to report numbers 10-0000156 and 10-0000210, then except for basic information, the city may withhold the remaining information relating to report number 10-0000156 under section 552.108(a)(1) of the Government Code and the remaining responsive information under section 552.108(a)(2) of the Government 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_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

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

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 "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 400205

Enc. Submitted documents

c: Requestor
(w/o enclosures)