



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 3, 2011

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2011-03069

Dear Ms. Rangel:

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# 409117.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for records for a named child. You claim that the submitted 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 representative sample of information.<sup>1</sup>

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 261.201 of the Family Code, which provides in part as follows:

- (a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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:

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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.

...

(c) In addition to Subsection (b), a court, on its own motion, may order disclosure of information that is confidential under this section if:

(1) the order is rendered at a hearing for which all parties have been given notice;

(2) the court finds that disclosure of the information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child; and

(3) the order is reduced to writing or made on the record in open court.

Fam. Code § 261.201(a), (c). Upon review, we agree the submitted information was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.021 as a person younger than 17 years of age). Accordingly, we determine the submitted information is generally confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, that the requestor included with her request a court order showing the requestor has been appointed the amicus attorney in the matter related to the child who is the subject of the submitted information. *See* Fam. Code § 107.001(1) (defining “amicus attorney”). The court order further states that “[t]he custodian of any relevant records relating to the child, including . . . law enforcement records . . . shall provide immediate access to the records to [a]micus [a]ttorney[.]” Section 261.201(c) provides that information made confidential by section 261.201(a) must be released pursuant to a court order if certain requirements are met. *See id.* § 261.201(c). In this instance, we are unable to determine whether or not the requestor’s court order complies with the requirements of section 261.201(c). Thus, if the sheriff determines the court order complies with section 261.201(c), the sheriff may not withhold the submitted information under section 261.201(a). Although you also claim the submitted information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.108 of the Government Code, a specific statutory right of access to information prevails over the common-law and general exceptions to disclosure under the Act. *Collins v. Tex Mall, L.P.*, 297 S.W. 3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see also* Open Records Decision Nos. 613 at 4 (1993), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, if the sheriff determines the court order complies with section 261.201(c), the information may not be withheld from this requestor under section 552.101 in conjunction with common-law privacy or section 552.108.

We note, however, the submitted information contains a medical record that pertains to the child victim, access to which is governed by the Medical Practice Act (the “MPA”). Section 552.101 of the Government Code also encompasses information made confidential by 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, in relevant 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.

*Id.* § 159.002(b)-(c). 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991).

Upon review, we find a portion of the submitted information, which we have marked, constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. We note confidential medical records may be released under the MPA to certain persons and entities under limited circumstances. Occ. Code §§ 159.003(a)(2) (provides for release of confidential medical information in a court or administrative proceeding if patient or patient's authorized representative provides written consent in accordance with section 159.005), .003(a)(12) (provides for release of confidential medical information in a court or administrative proceeding to a court or party to an action under a court order), .004 (exceptions to confidentiality in other situations); *see also id.* § 159.005 (provides consent requirements for release of confidential information). As noted above, the requestor is an amicus attorney appointed to assist the court in protecting the best interests of the child at issue and is not the legal representative of the child. *See* Fam. Code § 107.001(1). The requestor submitted an order requiring release of records relating to the child and requiring the parents of the child to sign any and all necessary releases of information related to the child. We note that any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See* Occ. Code § 159.002(c); Open Records Decision No. 565 at 7 (1990). Accordingly, the information we have marked constitutes a medical record that is subject to the MPA.

As noted above, if the court order complies with section 261.201(c) and a release provision of the MPA does not apply, then there is a conflict between the access provided under section 261.201(c) of the Family Code and the confidentiality provided under the MPA. Further, if the sheriff determines the court order does not comply with section 261.201(c) as to make the information confidential under section 261.201(a), but the requestor has a right of access to the medical record under the MPA, then there is also a conflict between the confidentiality of section 261.201(a) and the release provisions of 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 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, while section 261.201 of the Family Code generally governs child abuse and neglect records, the MPA specifically governs medical records. Thus, we conclude the MPA is more specific than section 261.201. Therefore, the marked medical record may only be released in accordance with the MPA. ORD 598. The remaining information must be withheld or released pursuant to section 261.201 of the Family Code.

In summary, the marked medical record may only be released in accordance with the MPA. If the sheriff determines the court order complies with section 261.201(c), then the sheriff must release the remaining information to the requestor on the basis of the court order.<sup>2</sup> In the alternative, if the sheriff determines the submitted court order does not comply with section 261.201(c), then the sheriff must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) 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\\_orl.php](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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 409117

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that, if the sheriff determines the court order complies with section 261.201(c), the information to be released is generally confidential with respect to the general public. Thus, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.