



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2011

Ms. Linda Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2011-06575

Dear Ms. Champion:

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# 418591.

The City of Victoria (the "city") received a request for information pertaining to two specified sexual-assault investigations. You claim the requested 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.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides in relevant part as follows:

(a) [T]he 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:

¹We note the submitted information contains a social security number. Section 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 under the Act.

(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:

(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 consists of two offense reports: case numbers 2008-00048935 and 2009-00026094. You assert each of these reports was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code). Upon review, we find the submitted information is within the scope of section 261.201(a). The requestor is a parent of the child victim in both reports. However,

the requestor was suspected of committing the alleged or suspected abuse in case number 2008-00048935. Therefore, we determine the requestor does not have a right of access to case number 2008-00048935 under section 261.201(k). *See id.* § 261.201(k).

The requestor was not suspected of committing the alleged or suspected abuse in case number 2009-0026094. Thus, pursuant to section 261.201(k), the city may not withhold the information in case number 2009-0026094 from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(1) provides that any personally identifiable information about a witness under 18 years of age must be withheld unless the witness is the subject of the report or is the child of the parent, managing conservator, or other legal representative requesting the information.

Case number 2009-00026094 contains identifying information of witnesses who are noted as being children; however, the submitted information does not provide the ages of all of these child witnesses. Accordingly, the city must withhold under section 552.101 in conjunction with section 261.201(l)(1) the information in case number 2009-00026094 we have marked that identifies witnesses if the witnesses were under 18 years of age when the information was created and are not the children of the requestor. However, the city may not withhold this information under section 552.101 in conjunction with section 261.201(l)(1) if the witnesses either were not under 18 years of age when the information was created or are the children of the requestor. In addition, section 261.201(l)(3) provides the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Therefore, the city must withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201(l)(3). Section 261.201(l)(2) also states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(l)(2). Thus, we must address the applicability of sections 552.101, 552.1175, and 552.130 of the Government Code to the remaining information in case number 2009-0026094.²

Case number 2008-00048935 contains mental health records of the requestor's child. Section 552.101 also encompasses chapter 611 of the Health and Safety Code, provisions of which govern mental health records. Section 611.002 provides in part the following:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code permit disclosure of mental health records to a patient or a parent of a minor patient. *Id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). We have marked the information that constitutes mental health records, and that may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. *See* Health & Safety Code § 611.004(a)(4) (professional may disclose confidential information to person who has patient’s written consent).

As discussed above, case number 2008-00048935 is confidential under section 261.201(a) of the Family Code, but sections 611.004 and 611.0045 of the Health and Safety Code may provide the requestor with a right of access to the marked mental health records. Therefore, there is a conflict between section 261.201(a) of the Family Code and the applicable provisions of chapter 611 of the Health and Safety Code. 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 261.201 generally makes records of alleged child abuse confidential, the applicable provisions of chapter 611 specifically permit the release of mental health records under certain circumstances. Accordingly, chapter 611 prevails over section 261.201. Therefore, the city must release the marked mental health records if it receives the required authorization for the release of those records under sections 611.004 and 611.0045. If, however, the city does not receive the required authorization for the release of those records under sections 611.004 and 611.0045, then the city must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with chapter 611.

Case number 2009-0026094 contains medical records. Section 552.101 also encompasses section 159.002 of the MPA, which provides in part the following:

(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). Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

We have marked the information in case number 2009-0026094 that consists of the medical records of the requestor's child. 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. *See* Occ. Code §§ 159.004, 159.005. 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). As the parent of the child whose medical records are at issue, the requestor may have a right of access to the marked medical records under the MPA. Occ. Code § 159.005(a)(2). Thus, if the requestor provides proper consent in accordance with the MPA, then the city must release the marked medical records. However, if the requestor does not provide proper consent, then the city must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov't Code § 411.089(b)(1). Case number 2009-0026094 contains a Federal Bureau of Investigation ("FBI") number that constitutes CHRI generated by the FBI. Therefore, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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 types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating

disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public; therefore, the city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Some of the information in case number 2009-0026094 may be excepted from disclosure under section 552.1175 of the Government Code. Section 552.1175(b) provides the following:

Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). Section 552.1175(a)(7) provides that section 552.1175 is applicable to, among others, "criminal investigators of the United States as described by article 2.122(a), Code of Criminal Procedure[.]" Case number 2009-0026094 includes information pertaining to a United States Border Patrol agent that is not held by the city in an employment capacity. The city must withhold the information we have marked under section 552.1175 if the agent at issue is a criminal investigator of the United States as described by article 2.122(a) of the Code of Criminal Procedure and elects to restrict access to the information in accordance with section 552.1175(b). However, the city may not withhold this information under section 552.1175 if either the agent is not a criminal investigator of the United States as described by article 2.122(a) or he does not elect to restrict access to this information in accordance with section 552.1175(b).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The city must

withhold the Texas motor vehicle record information we have marked in case number 2009-0026094 under section 552.130.³

We summarize the following in regard to case number 2008-00048935: (1) the city must release the marked mental health records if it receives the required authorization for the release of those records under sections 611.004 and 611.0045 of the Health and Safety Code; however, the city must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with chapter 611 of the Health and Safety Code if it does not receive the required authorization for the release of those records under sections 611.004 and 611.0045; and (2) the city must withhold the remaining information in case number 2008-00048935 under section 552.101 in conjunction with section 261.201(a) of the Family Code.

We summarize the following in regard to case number 2009-0026094: (1) the city must withhold the witness information we have marked under section 552.101 in conjunction with section 261.201(1)(1) of the Family Code if the witnesses were under 18 years of age when the information was created and the requestor is not their parent; however, the city may not withhold this information under section 552.101 in conjunction with section 261.201(1)(1) if the witnesses either were not under 18 years of age when the information was created or are the children of the requestor; (2) the city must withhold the information we have marked under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code; (3) the city must release the marked medical records if the requestor provides proper consent in accordance with the MPA; however, the city must withhold the marked medical records under section 552.101 in conjunction with the MPA if the requestor does not provide proper consent; (4) the city must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code; (5) the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy; (6) the city must withhold the information we have marked under section 552.1175 of the Government Code if the agent at issue is a criminal investigator of the United States as described by article 2.122(a) of the Code of Criminal Procedure and elects to restrict access to the information in accordance with section 552.1175(b); however, the city may not withhold this information under section 552.1175 if either the agent is not a criminal investigator of the United States as described by article 2.122(a) or he does not elect to restrict access to this information in accordance with section 552.1175(b); (7) the city must withhold the information we have marked under section 552.130 of the Government Code;

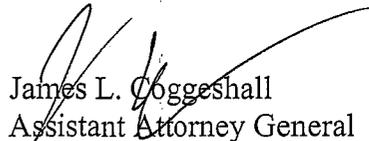
³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

and (8) the city must release the remaining information in case number 2009-0026094 pursuant to section 261.201(k) of the Family Code.⁴

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 418591

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because the requestor has a right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.