



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 14, 2011

Ms. Tricia McKinney  
Public Information Specialist  
Katy Independent School District  
P.O. Box 159  
Katy, Texas 77492-0159

OR2011-08408

Dear Ms. McKinney:

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# 420508 (Katy I.S.D. P.I.R. # 10442-40).

The Katy Independent School District (the "district") received a request for all records mentioning a named individual and relating to a specified incident. You state the district has released some of the requested information. 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 information. We have also received and considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

We note some of the submitted information is subject to the Medical Practices Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. 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 section encompasses information protected by other statutes, such as the MPA, section 159.002 of which 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 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). This office also has concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). We note 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) 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).

We note the requestor is a parent of the child whose medical records we have marked. As the child's parent, the requestor may have a right of access to these medical records under the MPA. *See id.* § 159.005(a)(2). Accordingly, if the requestor provides proper consent in accordance with the MPA, the district must release the medical records we have marked. *See* Occ. Code § 159.005. If the requestor does not provide the proper consent, the district must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides:

(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

(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 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you explain the submitted information consists of files, reports, and records used or developed in an investigation of alleged or suspected child abuse by the district's police department. Thus, the submitted information is generally confidential under section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). However, because the requestor is a parent of the child victim named in this report and the requestor is not accused of committing the alleged or suspected abuse. Accordingly, the district may not withhold from this requestor information concerning the alleged abuse or neglect that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). Nonetheless, before the district provides information concerning this report, it must redact the identity of the person who made the report, which we have marked. *See id.* § 261.201(l)(3). Additionally, the district must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). As you also raise section 552.108 as an exception, we will consider its applicability to this information.

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). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the submitted information relates to an investigation by the district’s police department. You further explain the police department’s investigation is concluded and did not result in a conviction or a deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) of the Government Code is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you have released, the district may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, the district must release the marked medical records in accordance with the MPA. With the exception of basic information, the district may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing basic information, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The district must release the remaining information to this requestor.<sup>1</sup>

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

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<sup>1</sup>We note the requestor has a special right of access to the basic information the district is releasing. Because such information is confidential with respect to the general public, if the district receives another request for this information from an individual other than this requestor, the district must again seek a ruling from this office.

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 cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name and title.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/em

Ref: ID# 420508

Enc. Submitted documents

c: Requestor  
(w/o enclosures)