



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2011

Mr. Tommy L. Coleman  
Assistant District Attorney  
Williamson County District Attorney's Office  
405 South Martin Luther King #1  
Georgetown, Texas 78626

OR2011-08861

Dear Mr. Coleman:

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# 421305.

The Williamson County District Attorney's Office (the "district attorney") received a request for all records pertaining to criminal charges against a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information consists of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides a completed investigation is public information unless it is confidential by other law or excepted from disclosure under section 552.108. Gov't Code § 552.022(a)(1). Section 552.111 is a discretionary exception and does not make information confidential; therefore, the district attorney may not withhold any of the submitted information under this exception. *See id.* § 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure . . . are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the

submitted information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to the information at issue, and the information may not be withheld on that basis. However, pursuant to section 552.022(a)(1), we will consider your claim under section 552.108 of the Government Code. Further, as sections 552.101, 552.130, 552.132, and 552.1325 of the Government Code constitute "other law" that makes information confidential for the purposes of section 552.022, we will also consider your arguments under those sections.

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 section 261.201 of the Family Code, which provides, in part:

(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:

(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.

Fam. Code § 261.201(a), (k). Upon review, we find the submitted information was used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1)(E) (definition of "abuse" includes aggravated sexual assault under Penal

Code sections 22.021); *see also* Penal Code § 22.011(c) (defining "child" for purposes of Penal Code section 22.021 as a person younger than 17 years of age). Accordingly, the submitted information is within the scope of section 261.201 of the Family Code. In this instance, the requestor is the authorized representative of a parent of the child victim. However, we note the parent is also the individual accused of committing the alleged abuse. Therefore, the submitted information may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k) (stating a child's parent may not obtain information that is subject to section 261.201(a) concerning reported abuse or neglect of the child if the parent is alleged to have committed the abuse or neglect). Accordingly, the district attorney must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

The submitted information, however, contains medical records of the child concerned, which are governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-167.202. Section 159.002 of the MPA provides, in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (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(a)-(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). We have also found when a file is created as the result of a hospital stay, all of the documents in the file relating to diagnosis and treatment constitute either 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 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. Occ. Code §§ 159.004, .005.

Thus, although the submitted information is generally confidential under section 261.201 of the Family Code, the MPA may provide the parent with a right of access to the portion of the information consisting of his child's medical records, which we have marked. Therefore, there is a conflict between the confidentiality provisions of section 261.201(a) of the Family Code and the access 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, although section 261.201(a) generally makes records of alleged child abuse confidential, the MPA specifically permits release of medical records to certain parties and in certain circumstances. Therefore, we conclude, notwithstanding the provisions of section 261.201 of the Family Code, the district attorney must release the marked medical records if he receives consent that complies with the MPA. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the district attorney does not receive consent that complies with the MPA, the district attorney must withhold the submitted information in its entirety under section 552.101 in conjunction with section 261.201.<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 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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bs

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<sup>1</sup>As we are able to make this determination, we need not address your remaining arguments against disclosure.

Ref: ID# 420305

Enc. Submitted documents

c: Requestor  
(w/o enclosures)