



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 24, 2011

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

OR2011-09057

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# 422283.

The Victoria Police Department (the "department") received a request for information relating to a specified case number. 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 information you submitted.

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 exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in part:

(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.

Fam. Code § 261.201(a), (k). You contend the submitted information is confidential under section 261.201. We find the information at issue was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining “child,” for purposes of offense of injury to a child, as a person 14 years of age or younger). We note information may not be withheld on the basis of section 261.201(a) from a parent of a child who was the victim of alleged or suspected abuse, unless the parent is alleged to have committed the abuse. *See id.* § 261.201(k). Although the requestor may be an attorney for a parent of the child victim, the parent concerned is suspected of committing the alleged child abuse. Therefore, the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2* (addressing predecessor statute).

In this instance, however, the submitted information includes medical records governed by the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA 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 determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See Open Records Decision No. 598 (1991)*. In this instance, the medical records at issue involve a child. Medical records involving a minor may only be released 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, 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). The medical records we have marked are confidential under section 159.002 of the MPA but must be released if the department receives the required written consent for release of the records under sections 159.004 and 159.005 of the MPA.

The submitted information also includes mental health records governed by provisions of chapter 611 of the Health and Safety Code. Section 611.002 provides in part:

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

Health and 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 provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). The mental health records we have marked are confidential under section 611.002 of the Health and Safety Code but must be released if the requestor is authorized to obtain the records under sections 611.004 and 611.0045 of the Health and Safety Code. *See* Health and Safety Code § 611.004(a)(4) (professional may disclose confidential information to person who has patient’s written consent or to parent of minor patient).

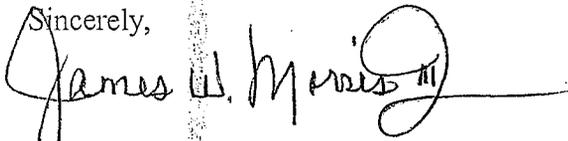
Therefore, although the submitted information is generally confidential under section 261.201 of the Family Code, sections 159.004 and 159.005 of the MPA and sections 611.004 and 611.0045 of the Health and Safety Code may provide the requestor with a right of access to the marked medical and mental health records. Thus, there is a conflict between section 261.201 of the Family Code and the applicable provisions of the MPA and 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 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.). Although section 261.201 generally makes records of an investigation of alleged or suspected child abuse confidential, the applicable provisions of the MPA and chapter 611 of the Health and Safety Code specifically permit the release of medical and mental health records to certain parties and under certain circumstances. Therefore, notwithstanding the provisions of section 261.201 of the Family Code, we conclude the marked medical and mental health records must be released to the requestor if the department receives the required authorization for the release of those records under

sections 159.004 and 159.005 of the MPA and sections 611.004 and 611.0045 of the Health and Safety Code. In that event, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. But if the department does not receive the required authorization for release of the medical and mental health records, then all of the submitted information must be withheld from the requestor 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 422283

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>1</sup>We note a parent or legal representative of a child who is the subject of reported abuse or neglect may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. See Fam. Code § 261.201(g).