



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2011

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2011-17058

Dear Ms. Monteros:

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# 436489 (CA-OP-11-371).

The El Paso County Sheriff's Office (the "sheriff") received a request for incident report number 2011-06242. You claim the submitted 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.

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 made confidential by other statutes, such as section 261.201 of the Family Code, which provides, in relevant 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 . . . 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). You state the submitted incident report number 2011-06242 was used or developed in an investigation by the sheriff of alleged child abuse. *See id.* § 261.001(1)(E) (stating definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). Based on your representation and our review, we find the submitted information is generally confidential under section 261.201 of the Family Code.

The requestor, however, is a parent of the child victim listed in the incident report, and the requestor is not suspected of having committed the alleged abuse. In this instance, the sheriff may not use section 261.201(a) to withhold the submitted information from this requestor.¹ Fam. Code § 261.201(k). Section 261.201(l)(2), however, states any information that is

¹Because the submitted information would otherwise be excepted from release under the Act, the sheriff must again seek a decision from this office if it receives a request for this information from a different requestor.

excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). You assert the submitted information is excepted from public disclosure under section 58.007 of the Family Code. We will, therefore, consider the applicability of section 58.007 to the submitted information.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007 provides, in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law.

Id. § 58.007(c), (e), (j)(2). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). The submitted incident report involves a twelve-year-old suspected of sexual assault. Thus, we find the report involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining juvenile “delinquent conduct” for purposes of section 58.007). Therefore, the submitted information is within the scope of section 58.007(c). The requestor, however, is the step-parent of the juvenile suspect listed in the report. We are unable to determine whether or not the requestor is the juvenile suspect’s guardian for purposes of section 58.007. Thus, if the sheriff determines the requestor is not the juvenile suspect’s guardian, we conclude the submitted information is generally confidential under section 58.007(c) of the Family Code.

The information, however, contains the requestor’s child’s medical records, which are governed under 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.

Although the submitted information is generally confidential under section 58.007 of the Family Code, the MPA may provide the requestor with a right of access to the portion of the information consisting of her child's medical records, which we have marked. Therefore, there is a conflict between the confidentiality provisions of section 58.007(c) 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 58.007(c) generally makes juvenile law enforcement records confidential, the MPA specifically permits release of medical records to certain parties and in certain circumstances. Therefore, we conclude, notwithstanding the provisions of section 58.007 of the Family Code, the sheriff must release the marked medical records if it receives consent from the requestor that complies with the MPA. The sheriff must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the sheriff does not receive consent that complies with the MPA, the sheriff must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

If, however, the sheriff determines the requestor is the juvenile suspect's guardian, the sheriff may not use section 58.007(c) of the Family Code to withhold the submitted information from this requestor. Fam. Code § 58.007(e). Section 58.007(j)(2), however, states the sheriff must withhold any information that is excepted from disclosure under other law. *Id.* § 58.007(j)(2). Section 261.201(l)(3) of the Family Code states that, notwithstanding section 261.201(k), the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). Thus, the sheriff must withhold the reporting party's identifying information under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Furthermore, as previously discussed, the submitted information contains the requestor's child's medical records that are subject to the MPA. Thus, if the sheriff receives consent from the requestor that complies with the MPA, the sheriff must release the marked medical records to the requestor. If the sheriff does not receive consent that complies with the MPA, the sheriff must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. Regardless, the sheriff must release the remaining information to the requestor.

In summary, if the sheriff determines the requestor is not the juvenile suspect's guardian, the sheriff must release the marked medical records, if it receives consent from the requestor that complies with the MPA, and withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the sheriff determines the requestor is not the juvenile suspect's guardian and does not receive consent that complies with the MPA, the sheriff must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If, however, the sheriff determines the requestor is the juvenile

suspect's guardian, the sheriff must withhold the reporting party's identifying information under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Furthermore, if the sheriff receives consent from the requestor that complies with the MPA, it must release the marked medical records, along with the remaining information. But, if the sheriff does not receive consent that complies with the MPA, it must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA, and release the remaining information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 436489

Enc. Submitted documents

c: Requestor
(w/o enclosures)