



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2012

Ms. Erin A. Higginbotham  
Denton, Navarro, Rocha & Bernal, P.C.  
2500 West William Cannon, Suite 609  
Austin, Texas 78745

OR2012-01943

Dear Ms. Higginbotham:

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# 444760.

The City of Copperas Cove (the "city"), which you represent, received a request for two specified dispatch calls and a specified interview, investigation, and lab results pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions 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 section encompasses information made confidential by other statutes, including 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:

---

<sup>1</sup>Although you also raise section 552.022 of the Government Code, we note section 552.022 is not an exception to disclosure but a list of categories of information that are not excepted from disclosure unless they are expressly confidential under other law. See Gov't Code § 552.022.

(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:

...

(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 information pertains to an investigation of alleged child abuse. *See id.* § 261.001(1) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of aggravated sexual assault under Penal Code § 22.021); *see also* Penal Code § 22.011(c) (defining “child” for purposes of Penal Code § 22.021). Upon review, we agree the submitted information is generally confidential under section 261.201(a) of the Family Code. However, the requestor is a parent of the child victim, and the requestor is not alleged to have committed the suspected abuse. Therefore, the city may not use section 261.201(a) to withhold the submitted information from this requestor. Fam. Code § 261.201(k). However, section 261.201(l)(2) states any information otherwise excepted from required disclosure under the Act or other law must also be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider your remaining arguments against disclosure.

We note the submitted information contains medical records subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. Section 552.101 of the Government Code also encompasses the MPA, which governs access to medical records. Section 159.002 of the Occupations Code 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 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). 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). Pursuant to the MPA, medical records of a minor may be released with the parent's or legal guardian's signed, written consent, provided that 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, .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).

Upon review, we find the information we have marked constitutes medical records. As noted above, the requestor is a parent of the child whose medical records are at issue. Accordingly, if the requestor provides proper consent in accordance with the MPA, the marked medical records must be released because a statutory right of access prevails over a claim under common-law privacy and section 552.108 of the Government Code. *See Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex.

App.—San Antonio 2008, pet. granted, judgment vacated w.r.m.) (when statute directly conflicts with common-law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common law principle); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If the requestor does not provide proper consent, the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA.

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 the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue relates to a criminal matter that did not result in a conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) applies 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. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the complainant and a detailed description of the offense. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (summarizing types of information considered to be basic information), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the basic information identifies the reporting party. Section 261.201(l)(3) of the Family Code states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). *See* Fam. Code § 261.201(l)(3). Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.<sup>2</sup> However, in releasing basic information, the city must withhold the reporting party’s identity under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

You claim the basic information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that

---

<sup>2</sup>Because our ruling is dispositive for this information, we do not address your remaining argument against its disclosure.

is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type 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. The courts and this office have recognized victims of sexual assault or other sex-related offenses have certain common-law privacy interests. *See* 540 S.W.2d 668; Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). As previously noted, however, the requestor is a parent of the child victim whose privacy interests are implicated in this report. As such, the requestor has a special right of access to information that would ordinarily be withheld to protect the victim's common-law privacy interests. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city may not withhold any of the basic information from this requestor on the basis of the victim's common-law privacy interests. Further, we do not otherwise find any of the basic information highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must release or withhold the marked medical records in accordance with the MPA. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.<sup>3</sup> However, in releasing basic information, the city must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

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,

---

<sup>3</sup>The requestor in this instance has a special right of access under section 261.201 of the Family Code to the information being released. Accordingly, if the city should receive another request for this information from a different requestor, the city should again request an opinion from this office.

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a stylized flourish at the end.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/ag

Ref: ID# 444760

Enc. Submitted documents

c: Requestor  
(w/o enclosures)