



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2012

Ms. Julie V. Pandya
For City of Highland Village
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2012-02276

Dear Ms. Pandya:

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# 445361 (ORR# 52765).

The City of Highland Village (the "city"), which you represent, received a request for records pertaining to a specified incident. You state you will release some information to the requestor. You also state you will redact information subject to section 552.130 pursuant to Open Records Decision No. 684 (2009).¹ You claim the remaining 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.

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercedes Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

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. Section 552.101 encompasses information that other statutes make confidential, including section 261.201 of the Family Code, which provides as follows:

(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[.]

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

Fam. Code § 261.201(a), (k), (l). We find that the information in question 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). *See id.* § 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family Code as including offense of sexual assault under section 22.011 of the Penal Code); *see also* Penal Code § 22.011 (defining “child” for purposes of sexual assault of a child as person under 17 years of age). Thus, we find the submitted information is generally confidential under section 261.201 of the Family Code.

We note, however, the requestor is the parent of the child victim. Further, the requestor is not alleged to have committed the suspected abuse. Therefore, the city may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states that any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). We note the submitted information is also subject to section 58.007 of the Family Code. Accordingly, we will consider the applicability of this section to the submitted information, as well as your arguments under sections 552.101 and 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Section 58.007 provides in pertinent part as follows:

(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 Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). Upon review, we find the submitted information involves an eleven-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 city 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.

However, as you acknowledge, the submitted information contains the requestor's child's medical records and information obtained from the 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, in the event the requestor is not the guardian of the juvenile suspect, the MPA may provide the requestor with a right of access to the portion of the information consisting of her child's medical records and information obtained from the 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. Thus, the MPA prevails over section 58.007. Additionally, although you also claim section 552.108 for the medical records and information obtained from the medical records, the MPA prevails over the general exceptions to disclosure under the Act. *See* 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). Accordingly, the city may not withhold the medical records and information obtained from the medical records under section 552.108. The city must release the medical records and information obtained from the medical records only in accordance with the MPA. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

However, if the city determines the requestor is the juvenile suspect's guardian, the city may not use section 58.007(c) of the Family Code to withhold the submitted information from this

requestor. Fam. Code § 58.007(e). In this event, the city must withhold the medical records and information obtained from the medical records under section 552.101 of the Government Code in conjunction with the MPA unless the city receives proper consent from the requestor. We also note section 58.007(j)(2) states the city must withhold any information that is excepted from disclosure under other law. *Id.* § 58.007(j)(2). Accordingly, in the event the city determines the requestor is the juvenile suspect's guardian, we will consider your argument under section 552.108(a)(1) of the Government Code for the remaining information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit showing, the remaining information relates to a pending criminal investigation. Based upon your representation and our review, we find section 552.108(a)(1) is applicable to the remaining information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, as you acknowledge, 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*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that basic information includes, among other items, an identification and description of the complainant and a detailed description of the offense, but does not include identifying information of a witness or of a victim, unless the victim is also the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, which you state you will release, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the identifying information of the reporting party under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code.

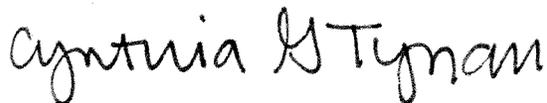
In summary, unless the requestor provides proper consent, the medical records and information obtained from the medical records, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with the MPA. If the city determines the requestor is not the juvenile suspect's guardian, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If, however, the city determines the requestor is the juvenile suspect's guardian, with the exception of the basic information, the city may

withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code.²

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 445361

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.