



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2012

Mr. Charles Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-02592

Dear Mr. Weir:

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# 445835 (COSA File Nos. W004531 and W004694).

The City of San Antonio (the "city") received two requests for a specified police report. You claim the 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.

Section 552.101 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, 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, 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 claim the submitted information was used or developed by the city's police department in an investigation under chapter 261. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.011 as person under 17 years of age). Upon review, we find the submitted information is within the scope of section 261.201(a). You have not indicated that the city's police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold the submitted information from the first requestor under section 552.101 of the Government Code as information made confidential by law. We note, however, the second requestor is the father of the child victim and is not alleged to have committed the suspected abuse. Thus, the city may not withhold the submitted information from the second requestor

on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201(l)(2) of the Family Code states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). We note the submitted information contains records that may be subject to the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Accordingly, we will consider the applicability of the MPA, and your argument under section 552.108 for the submitted information.

Medical records are governed by the MPA, which is also encompassed by section 552.101 of the Government 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.

Id. § 159.002(b)-(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). In this instance, the submitted information includes the medical records of the second requestor’s child. 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) the 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).

As previously noted, the second requestor is a parent of the child whose medical records are at issue. As the child’s parent, this requestor may have a right of access to these medical records under the MPA. *See* Occ. Code § 159.005(a)(2). Although you seek to withhold the medical records at issue under section 552.108 of the Government Code, a specific statutory right of access provision prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Therefore, the medical records at issue, which we have marked, may only be released in accordance with the MPA. Accordingly, if the second requestor provides proper consent in accordance with the MPA, the department must release the marked medical records. *See* Occ. Code

§ 159.005. If this requestor does not provide the proper consent, the department must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.¹

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §552.301(e)(1)(A). You state that the remaining information relates to a pending criminal investigation by the city’s police department. Based upon your representation and our review, we conclude that release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *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). Thus, section 552.108(a)(1) is generally applicable to the remaining information.

We note, however, that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The identity of the complainant is included in the basic information. *See* ORD 127 at 4. We note, however, subsection 261.201(l)(3) of the Family Code states the identity of the reporting party must be withheld prior to releasing the report to the parent. 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)(1) of the Government Code; however, in releasing basic information, the city must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, the city must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city may only release the medical records we have marked to the second requestor if the city receives written consent for release of the records that complies with sections 159.004 and 159.005 of the MPA. With the exception of basic information, the city may withhold the remaining information from the second requestor under section 552.108(a)(1) of the Government Code; however, in releasing basic information, the

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of the information.

city must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 445835

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the second requestor has a special right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.