



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2012

Ms. Ashley Fourt
Assistant District Attorney
Tarrant County Criminal District Attorney's Office
401 West Belknap
Fort Worth, Texas 76196-0201

OR2012-06481

Dear Ms. Fourt:

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# 451427.

The Tarrant County Juvenile Services Department (the "department") received a request for all records pertaining to a named individual. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The records of a juvenile probation department relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(b). *See* Fam. Code § 58.007. However, we note section 58.007 is inapplicable in this instance because the records at issue relate to conduct taking place in 1991, 1992, and 1993. Accordingly, we address your argument under former section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court, pertaining to juvenile conduct that occurred before January 1, 1996, were governed by former section 51.14(b), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 of the Family Code provided, in relevant part, as follows:

(b) All files and records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court are open to inspection only by:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution; or
- (5) the Texas Department of Corrections, the Department of Public Safety, and the Texas Juvenile Probation Commission, for the purpose of maintaining statistical records of recidivism, and for diagnosis and classification.

Fam. Code § 51.14(b). Section 51.14 applies only to records of a “child,” which is defined as a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). The records of a juvenile probation department are subject to section 51.14(b). *See Attorney General Opinion MW-359 at 1-2 (1981)*. The submitted information consists of juvenile probation records related to juvenile conduct that occurred before January 1, 1996. Therefore, the submitted information is generally confidential under section 51.14(b) of the Family Code. However, section 51.14(b)(3) provides a right of access to an attorney for the child who is the subject of the records. In this instance, the requestor is an investigator who requests the records on behalf of the attorney for the person whose juvenile probation records are at issue. Accordingly, the requestor has a right of access to the records concerning her client and they may not be withheld from her on the basis of former section 51.14(b) of the Family Code. However, we note portions of the records relate to children who are not the requestor’s client. These portions of the records, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with former section 51.14(b) of the Family Code.

Section 552.101 encompasses information protected by laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems

confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement with the criminal justice system. Gov’t Code § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with the criminal justice system). Upon review, we find the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code is generally confidential.

Section 552.101 also encompasses section 611.002 of the Health and Safety Code. Section 611.002 of the Health and Safety Code applies to “[c]ommunications 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.” Health & Safety Code § 611.002; *see also id.* § 611.001 (defining “patient” and “professional”). The mental health records we have marked are confidential under section 611.002 of the Health and Safety Code. However, sections 611.004 and 611.0045 provide for access to mental health records by certain individuals. *See id.* §§ 611.004(a)(4) (professional may disclose confidential information to person who has patient’s written consent), .0045 (professional may deny access to record if professional determines release would be harmful to patient); Open Records Decision No. 565 (1990). Here, the mental health records must generally be released if the requestor is authorized to obtain the records under sections 611.004 and 611.0045 of the Health and Safety Code.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which pertains to medical records. *See* Occ. Code §§ 151.001-168.202. 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). 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). Medical records must be released upon the patient'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. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked medical records regarding the requestor's client that are subject to the MPA. The department must generally withhold this information under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code unless it receives written consent for the release of the record that complies with sections 159.004 and 159.005 of the MPA.

Section 552.101 of the Government Code also encompasses section 258.102 of the Occupations Code, which provides in pertinent part:

(a) The following information is privileged and may not be disclosed except as provided by this subchapter:

(1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and

(2) a dental record.

Occ. Code § 258.102(a). A "dental record" means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. *Id.* § 258.101(1). Information that is privileged under chapter 258 of the Occupations Code may be disclosed only under certain specified circumstances. *See id.* § 258.104 (consent to disclosure); *see also id.* §§ 258.105, .106, .107 (exceptions to privilege). A person who receives information that is privileged under section 258.102 of the Occupations Code may disclose that information to another person only to the extent that disclosure is consistent with the purpose for which the information was obtained. *See id.* § 258.108. The department

must generally withhold the dental record we have marked under section 258.102 of the Occupations Code unless the department receives the required consent for release of the record under section 258.104 of the Occupations Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130. The motor vehicle record information we have marked is generally confidential under section 552.130 of the Government Code.

We note a statutory right of access, such as that provided by section 51.14(b)(3), generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, section 552.130 contains its own access provisions governing release of information. As such, it is not a general exception to disclosure under the Act. Accordingly, we must address the conflict between the access provided by former section 51.14(b) of the Family Code and the confidentiality provided under section 552.130 of the Government Code. We will also address the conflict between the requestor's right of access under former section 51.14(b) and the information made confidential by section 411.083 of the Government Code.

Where general and specific provisions 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 51.14(b) generally allows the requestor access to her client's juvenile probation records, section 411.083 specifically makes CHRI generated by TCIC or NCIC confidential. Section 552.130 specifically protects driver's license and motor vehicle record information. We therefore conclude the confidentiality provisions found in sections 411.083 and 552.130 of the Government Code are more specific than the general right of access provided under former section 51.14(b) of the Family Code. Accordingly, the department must withhold the information we have marked pursuant to sections 411.083 and 552.130 of the Government Code.

There is also a conflict between the requestor's statutory right of access under former section 51.14(b) of the Family Code and the more restrictive release provisions of sections 611.004 and 611.0045 of the Health and Safety Code, the MPA, and section 258.104

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of the Occupations Code. Thus, we must resolve the conflict between the confidentiality provisions of the health statutes and the access provided by section 51.14(b). As discussed above, where information falls within both a general and a specific statutory provision of law, the specific provision prevails over the general provision, unless the general statute was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 611.002 of the Health and Safety Code, the MPA, and section 258.104 of the Occupations Code specifically concern mental health records, medical records, and dental records, respectively. Section 51.14(b) applies to all juvenile probation records. Thus, we find the provisions of section 611.002 of the Health and Safety Code, the MPA, and section 258.104 of the Occupations Code are more specific than section 51.14(b) of the Family Code. Therefore, the mental health records we have marked may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The medical records we have marked may only be released in accordance with the MPA. The dental record we have marked may only be released in accordance with section 258.104 of the Occupations Code.

In summary, the department must withhold the information concerning children other than the requestor's client we have marked under section 552.101 of the Government Code in conjunction with former section 51.14(b) of the Family Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department may only release the marked mental health records if it receives the proper authorization for release of the records under sections 611.004 and 611.0045 of the Occupations Code. The department may only release the marked medical records if it receives proper consent pursuant to the MPA. The department may only release the marked dental record if it receives proper authorization for release of the record under section 258.104 of the Occupations Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.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

²The requestor has a right of access under former section 51.14(b) of the Family Code to the information being released. Because this information would be confidential with respect to the general public, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.

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,

A handwritten signature in cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 451427

Enc. Submitted documents

c: Requestor
(w/o enclosures)