



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2012

Ms. Rebecca Brewer
Abernathy Roeder Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2012-09992

Dear Ms. Brewer:

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# 457570.

The Frisco Fire Department (the "department"), which you represent, received a request for the medical records of a named individual related to a specified incident. You claim that the requested 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.

You state that the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-03678 (2012). In Open Records Letter No. 2012-03678, we determined that the Frisco police department must withhold the requested information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, the current request involves a different requestor who is a representative of the parents of the child victim at issue and, thus, may have a right of access to the information. Thus, we find that the circumstances have changed, and the department may not rely on Open Records Letter No. 2012-03678 as a previous determination in this instance with respect to the submitted information. *See* Open Records Decision No. 673 (2001). Accordingly, we will address your arguments against disclosure of 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 protected by other statutes, such as section 261.201 of the Family Code, which provides in pertinent part 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, 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

[and]

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

Fam. Code § 261.201(a), (k), (l). The submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Upon review, we find the submitted information is confidential under section 261.201 of the Family Code.

In this instance, the requestor is the representative of the parent of the child victim listed in the submitted records who is suspected of committing the alleged abuse or neglect. As such, the submitted information may not be provided to the requestor pursuant to section 261.201(k) of the Family Code. *Id.* § 261.201(k) (stating child’s parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect if parent is alleged to have committed abuse or neglect).

We note, however, that the submitted information consists of records of the provision of emergency medical services (“EMS”). Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which is applicable to EMS records and provides in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course or providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(a)-(c). Section 773.091 further provides, however, that

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Id. § 773.091(g). We note that an EMS record may be released to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf.” *Id.* § 773.092(e)(4). When the patient is deceased, as is the case here, the patient’s personal representative may consent to the release of the patient’s records. *Id.* § 773.093(a); see Open Records Decision No. 632 (1995) (defining “personal representative” for purposes of Health & Safety Code § 773.093). The consent must be in writing, signed by the patient, authorized representative, or personal representative, and specify (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. Health & Safety Code § 773.093(a). Therefore, the EMS records are confidential under section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), but must be released if the deceased patient’s personal representative provides the department with written consent for release that meets the requirements of section 773.093(a). See *id.* §§ 773.092, .093; ORD 632.

Thus, although the submitted information is confidential under section 261.201 of the Family Code, section 773.092(e) of the Health and Safety Code may provide the requestor with a right of access to the EMS records. Therefore, there is a conflict between section 261.201 and section 773.092(e). 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 that 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.). Although section 261.201 of the Family Code generally makes records of an investigation of alleged or suspected child abuse or neglect confidential, section 773.092(e) of the Health and Safety Code specifically permits the release of an EMS record to a deceased patient’s personal representative. Therefore, notwithstanding the provisions of section 261.201 of the Family Code, we conclude that the submitted EMS records must be released to the requestor pursuant to section 773.092(e) of the Health and Safety Code if the department receives the required authorization for release that complies with section 773.093(a). If the department does not receive the required authorization for release of the EMS records, then the department must withhold all of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.¹

¹As our ruling is dispositive, we do not address your remaining claims.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 457570

Enc. Submitted documents

c: Requestor
(w/o enclosures)