



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

July 25, 2012

Ms. Lizbeth Islas Plaster  
City Attorney  
City of Lewisville  
P.O. Box 299002  
Lewisville, Texas 75029-9002

OR2012-11550

Dear Ms. Plaster:

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# 462115.

The City of Lewisville (the "city") received a request for information related to police report number 11-08630. 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.

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 section 261.201 of the Family Code, which states:

(a) Except as provided by Section 261.203, the 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[.]

Fam. Code § 261.201(a), (k), (l)(2). 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) (defining “abuse” for purposes of ch. 261 of the Fam. Code); *see also id.* § 101.003(a) (defining “child” for purposes of ch. 261). Thus, the submitted information is subject to section 261.201. The requestor is a parent of the child victim named in the report, and the requestor is not accused of the suspected abuse. Therefore, the city may not withhold this report from her on the basis of section 261.201(a) of the Family Code. *See id.* § 262.201(k). Nonetheless, before the city provides information concerning this report to the requestor, it must redact any information that is otherwise excepted under the Act or other law. *See id.* § 261.201(l)(2). As you raise section 552.108 of the Government Code, we will consider that exception for the submitted information.

First, however, we note that a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains a magistrate's warning that is subject to section 552.022(a)(17). The city may only withhold this information if it is confidential under the Act or other law. Although you seek to withhold the magistrate's warning under section 552.108 of the Government Code, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the magistrate's warning under section 552.108. As you raise no other exception to disclosure of the magistrate's warning, which we have marked, it must be released. However, we will address your claim under section 552.108 for the remaining information, which is not subject to section 552.022.

We next note the remaining information contains medical records. 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 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. Occ. Code §§ 159.004, .005.

We have marked medical records relating to the requestor's child. The city must release the medical records we have marked if it receives consent from the requestor that complies with the MPA. Further, although you raise section 552.108 for 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), 598 (1991) (exceptions in Act cannot be invoked to deny access to medical records because access provisions of MPA govern their release), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, the city may not withhold the marked medical records under section 552.108. However, we will consider your argument under section 552.108 for the remaining information not subject to the MPA.

Section 552.108 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted information relates to a pending prosecution. Based on this representation and our review, we find release of the remaining information would interfere with the detection, investigation, or prosecution of a 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 per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, 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 186-7; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the remaining information may be withheld under section 552.108(a)(1) of the Government Code.<sup>1</sup>

In summary, the city must release the marked magistrate’s warning pursuant to section 552.022(a)(17) of the Government Code. The city must release the marked medical records if it receives proper authorization under the MPA. With the exception of basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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<sup>1</sup>Because this requestor has a special right of access to the information being released, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office. *See* Family Code § 261.201(k); Gov’t Code § 552.023.

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, 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# 462115

Enc. Submitted documents

c: Requestor  
(w/o enclosures)