



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2012

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2012-13422

Dear Ms. Rangel:

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# 462871.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for a specified call slip and all reports associated with it, a specified case number and all reports associated with it, all calls to the requestor's address during a specified time period, and any reports filed by a named individual in which the requestor was mentioned. You state you have released some of the requested information. 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 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 section 261.201 of the Family Code, which provides in relevant part:

[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). Upon review, we find report 10-8462 was used or developed in an investigation of alleged abuse of a child, and therefore, is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(A) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). However, the submitted information reflects the requestor is the parent of the child victim and is not the individual alleged to have committed the abuse. *See id.* § 261.201(k). Accordingly, the sheriff’s office may not withhold report 10-8462 from this requestor under section 261.201(a). *Id.* However, the sheriff’s office must withhold the identity of the person who made the report of abuse, which we have marked. *Id.* § 261.201(1)(3). Additionally, section 261.201(1)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from

disclosure. *Id.* § 261.201(1)(2). Therefore, we will consider your remaining arguments under sections 552.101 and 552.108 of the Government Code for the submitted information.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; ORD 598. We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute 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).

Upon review, we find portions of the submitted information, which we have marked, constitute records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Medical records of an adult must be released upon the patient’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. *See* Occ. Code §§ 159.004, .005. Medical records of a minor may be released with the parent’s or legal guardian’s signed, written consent, provided that the consent specifies the same information as listed above for an adult patient. *Id.* 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 noted above, the requestor is the parent of the child whose medical records are at issue. Thus, the sheriff's office must withhold the medical records, which we marked, under section 552.101 of the Government Code in conjunction with the MPA, unless the sheriff's office receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

We now address your argument under section 552.108 of the Government Code for the remaining information. Section 552.108(a) 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 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 report number 12-12719 relates to a pending criminal investigation. Based upon this representation and our review, we conclude section 552.108(a)(1) is applicable to this report, and the release of report number 12-12719 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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state report number 10-8462 pertains to a case that did not result in conviction or deferred adjudication. Based on this representation and our review of the information at issue, we agree that section 552.108(a)(2) is applicable to case number 10-8462.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff's office may withhold case number 12-12719 under section 552.108(a)(1) of the Government Code and case number 10-8462 under section 552.108(a)(2) of the Government Code.

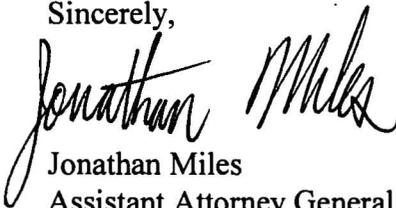
In summary, the sheriff's office must withhold the medical records, which we marked, under section 552.101 of the Government Code in conjunction with the MPA, unless the sheriff's office receives written consent for release of those records that complies with

sections 159.004 and 159.005 of the MPA. With the exception of basic information, the sheriff's office may withhold case number 12-12719 under section 552.108(a)(1) of the Government Code and case number 10-8462 under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the sheriff's office must withhold the reporting party's identifying information pursuant to section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.¹

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 462871

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note this requestor has a special right of access to the information being released under section 261.201(k) of the Family Code. Accordingly, if the sheriff's office receives another request for this same information from a different requestor, the sheriff's office must again seek a ruling from this office.