



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2012

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 Belknap
Fort Worth, Texas 76196-0201

OR2012-17406

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# 469408.

The Tarrant County Juvenile Services Department (the "department") received a request for a specified order and investigation report. You state the department has released some of the information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information pertains to a completed investigation. Section 552.022 of the Government Code deems as public "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is made confidential under the Act or other law or is excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Although you raise section 552.103 for the submitted information, we note this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not make information confidential for purposes of section 552.022. Accordingly, the department may not withhold the submitted information under section 552.103 of the Government Code.

However, section 552.101 of the Government Code does make information confidential, and we will consider its applicability to 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.

Fam. Code § 261.201(a), (k). You assert the submitted information was used or developed in an investigation of alleged child abuse. We note the department is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, pursuant to section 261.405(b) of the Family Code, the department is required to report alleged abuse or neglect in a juvenile justice program to the Texas Juvenile Probation Commission (the “commission”) and a local law enforcement agency for investigation. *See id.* §§ 261.405(b), .405(c) (commission shall conduct investigation if commission receives report of alleged abuse, neglect, or exploitation in any juvenile justice facility). The

submitted documents reflect the department reported the alleged abuse to the commission and provided the submitted information to the commission for use in the commission's investigation. Upon review, we conclude the submitted information consists of reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code. Although the requestor represents the parents of the child concerned, section 261.201(k) is not applicable because the department is not the agency that conducted the chapter 261 investigation. Therefore, the submitted information is confidential pursuant to section 261.201 of the Family Code and must generally be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

We note the submitted information contains mental health records for the child of the requestor's client. Section 552.101 of the Government Code also encompasses chapter 611 of the Health and Safety Code, provisions of which govern mental health records. Section 611.002 provides in part:

(a) Communications 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, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)–(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code permit disclosure of mental health records to a patient or a parent of a minor patient. *Id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). We have marked the information that constitutes mental health records, and that may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. *See* Health & Safety Code § 611.004(a)(4) (professional may disclose confidential information to person who has patient's written consent).

As discussed above, the submitted information is confidential under section 261.201(a) of the Family Code, but sections 611.004 and 611.0045 of the Health and Safety Code may provide the requestor with a right of access to the marked mental health records. Therefore, there is a conflict between section 261.201(a) of the Family Code and the applicable provisions of chapter 611 of the Health and Safety Code. 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 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 261.201 generally makes records of alleged child abuse confidential, the applicable provisions of chapter 611

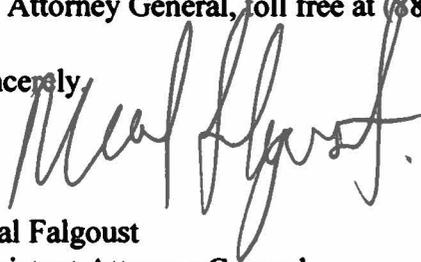
specifically permit the release of mental health records under certain circumstances. Accordingly, chapter 611 prevails over section 261.201. Therefore, the department must release the marked mental health records if it receives the required authorization for the release of those records under sections 611.004 and 611.0045. If the department does not receive the required authorization for the release of those records under sections 611.004 and 611.0045, then the department must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with chapter 611.

In summary, the marked mental health records must be withheld under section 611.002 of the Health and Safety Code, unless the department receives written consent for release of the records that complies with sections 611.004 and 611.0045 of the Health and Safety Code. The remaining information must be withheld under section 261.201(a) of the Family Code.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 469408

Enc. Submitted documents

c: Requestor
(w/o enclosures)