



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2013

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2013-03007

Dear Ms. Champion:

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# 479504.

The City of Victoria (the "city") received a request for police reports pertaining to a named individual within a specified period of time.¹ 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 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, including section 261.201(a) of the Family Code, which provides as follows:

[T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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

¹You state the city received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

(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.

Fam. Code § 261.201(a). You contend the submitted information is confidential under section 261.201. Upon review, we find reports 2011-00023224 and 2011-00023236 were used or developed in investigations under chapter 261. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person under 17 years of age). Thus, this information is within the scope of section 261.201 of the Family Code. You do not indicate the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the city must withhold reports 2011-00023224 and 2011-00023236 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Although you also seek to withhold the remaining information on this basis, we find you have not demonstrated the remaining submitted information was used or developed in investigations under chapter 261 of the Family Code. We therefore conclude the city may not withhold any of the remaining information under section 552.101 on the basis of section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which governs access to medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find the information we have marked consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created by a physician or

someone under the supervision of a physician; therefore, the information we have marked is subject to the MPA and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except 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 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. Upon review, we find the information we have marked constitutes CHRI, which the city must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

We note some of the remaining information is subject to section 552.130 of the Government Code.² Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Upon review, we conclude the city must generally withhold the motor vehicle record information we have marked under section 552.130. However, we note some of the marked information pertains to the requestor's husband. Section 552.130 is based on privacy principles; as such, the requestor may have a right of access to her husband's private information as his authorized representative. *See id.* § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning

²The 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).

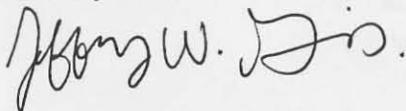
himself). Thus, if the requestor has a right of access to her husband's information, the city may not withhold this information from this requestor, but must withhold the marked information that does not pertain to the requestor's husband under section 552.130. Conversely, if the requestor does not have a right of access to her husband's information, the city must withhold all of the information marked under section 552.130.

In summary, the city must withhold reports 2011-00023224 and 2011-00023236 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. If the requestor has a right of access to her husband's information, the city must withhold only the marked information that does not pertain to the requestor's husband under section 552.130 of the Government Code. If the requestor does not have a right of access to her husband's information, the city must withhold all of the information marked under section 552.130 of the Government Code. The remaining information must be released.³

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

³We note the information to be released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See Gov't Code* § 552.147(b). We also note the information being released contains confidential information to which the requestor has a special right of access. *See id.* § 552.023(a). Because the requestor has a right of access to this information that would be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

Ref: ID# 479504

Enc. Submitted documents

c: Requestor
(w/o enclosures)

