



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2013

Ms. Jessica D. Richard
Assistant City Attorney
City of New Braunfels
424 South Castell Avenue
New Braunfels, Texas 78130

OR2013-14543

Dear Ms. Richard:

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# 496863.

The New Braunfels Police Department (the "department") received a request for criminal records and traffic history related to a named individual and "an arrest or criminal record" related to five of the named individual's relatives. You claim the requested 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, such as section 261.201 of the Family Code. Section 261.201 provides in relevant 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;

(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)(1)-(3). Upon review, we find 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 Fam. Code); *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 disabilities of minority removed for general purposes). Accordingly, the submitted information is confidential under section 261.201(a) of the Family Code.

However, the requestor is the authorized representative of the child victim listed in the report, who is now an adult. Thus, the requestor has a right of access to this report pursuant to section 261.201(k), and the department may not withhold it from him on the basis of section 261.201(a). *See id.* § 261.201(k). However, before the department provides any of this information to the requestor, the department must redact any personally identifying information about any other child witness. *See id.* § 261.201(1)(1). Accordingly, except for the information we have marked for release, the department must withhold the identifying information you have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code. Further, section 261.201(1)(3) of the Family Code states that the identity of the reporting party must be withheld. *See Fam. Code* § 261.201(1)(3). Thus, the department must withhold the identifying information of the reporting party you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. In addition, section 261.201(1)(2) states that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(1)(2). Because you raise an additional claim under section 552.101 of the Government Code for a portion of the remaining information, we consider your argument. We also consider whether any of the remaining information is excepted from public disclosure under section 552.130 of the Government Code.¹

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), which governs access to medical records. Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides:

(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.

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

(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.

Occ. Code § 159.002. Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. The information we have marked consists of information obtained from medical records. The department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code.²

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.³

To summarize, except for the information we have marked for release, the department must withhold the information you have marked and the additional information we have marked under sections 261.201(1)(1) and 261.201(1)(3) of the Family Code in conjunction with section 552.101 of the Government Code. The department must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code and (2) section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.⁴

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.

²As we make this determination, we do not address your remaining claim.

³We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

⁴The requestor has a special right of access under section 261.201(k) of the Family Code to the information being released. *See* Fam. Code § 261.201(k). Accordingly, if the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to 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# 496863

Enc. Submitted documents

c: Requestor
(w/o enclosures)