



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

Ms. Karla A. Schultz
Walsh, Anderson, Brown, Gallegos, and Green, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2012-01268

Dear Ms. Schultz:

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# 443316.

The Comal Independent School District (the "district"), which you represent, received a request for all nurse records, counselor records, and school records for the requestor's two children. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the date the request was received. This ruling does not address the public availability of any information that is not responsive to the request and the district need not release that information in response to this request.

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 information made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2); *see also* §§ 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261), 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* §§ 261.103 (listing agencies that may conduct child abuse investigations), .406. However, you assert some of the submitted information is confidential under section 261.201(a) because it relates to a report of alleged child abuse made to the Texas Department of Family and Protective Service’s Child

Protective Services Division. In this instance, we find the information we have marked pertains to a situation where the requestor is a parent of the child victim, but is accused of committing the alleged abuse. As such, the information we have marked is confidential under section 261.201(a) of the Family Code and the district must withhold it under section 552.101 of the Government Code. Furthermore, we understand the remaining submitted information was obtained by the Comal County Sheriff (the “sheriff”) during its investigation authorized under chapter 261 of the Family Code. We note, however, the requestor is a parent of the child who is the subject of the report, and is not alleged to have committed the abuse at issue. Thus the district may not use section 261.201(a) to withhold the remaining responsive information from this requestor. *See id.* § 261.201(k). However, section 261.201(l)(2) states any information otherwise excepted from required disclosure under the Act or other law must also be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will address your arguments under sections 552.101, 552.111, and 552.135 of the Government Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”). Some of the remaining records are medical records, access to which is governed by the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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.

Occ. Code § 159.002(b), (c). Medical records must be released upon the signed, written consent of a person authorized to act on the patient’s behalf, 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. *Id.* §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). In this instance, as the parent of the child whose medical information is at issue, the requestor may have a right of access under the MPA. *See Occ. Code* 159.005(a)(2). Although you claim the medical records are excepted under sections 552.108, 552.111, and 552.135 of the Government Code, a statutory right of a access overcomes general exceptions to disclosure under the Act. *See ORDs* 613 at 4, 451. Thus, the medical records we have marked must be withheld under section 552.101 in

conjunction with the MPA, unless the district receives written consent for release of the records that complies with sections 159.004 and 159.005 of the MPA.

Section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. As previously noted, a school district is not a law enforcement agency. However, you state, and provide an affidavit confirming, that the remaining responsive information relates to a criminal investigation being conducted by the sheriff. Based upon your representation, we conclude the release of the remaining responsive information 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the district may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.¹

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The medical records we have marked must be withheld under section 552.101 in conjunction with the MPA, unless the district receives written consent for release of the records that complies with sections 159.004 and 159.005 of the MPA. The district may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

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.

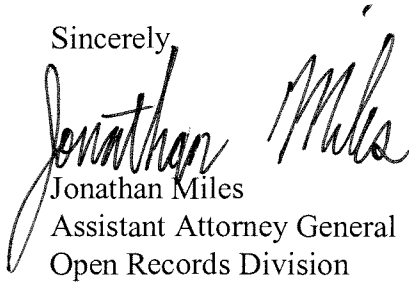
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹As our ruling is dispositive, we need not address your remaining arguments for this information.

²Because the requestor in this instance has a special right of access to some of the submitted information, the district must again seek a decision from this office if it receives another request for the same information from another requestor.

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/em

Ref: ID# 443316

Enc. Submitted documents

c: Requestor
(w/o enclosures)