



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 21, 2017

Mr. Adam Anderson  
Assistant County Attorney  
Montgomery County  
501 North Thompson, Suite 300  
Conroe, Texas 77301

OR2017-19069

Dear Mr. Anderson:

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# 671831 (ORR File No. 17PIA267).

The Montgomery County Constable's Office, Precinct 3 (the "constable's office") received a request for information pertaining to a specified case number. 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses statutes that make information confidential, such as section 261.201(a) of the Family Code, which provides as follows:

(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.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed by the constable's office in an investigation of alleged or suspected child abuse or neglect under chapter 261. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). Thus, the submitted information is subject to section 261.201. As you do not indicate the constable's office has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201.

However, section 261.201 provides information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a). Subchapter E of chapter 264 of the Family Code concerns the establishment and duties of children's advocacy centers. *See id.* §§ 264.401-411. Section 264.405 of the Family Code directs children's advocacy centers to provide services for victims of child abuse and their families. *Id.* § 264.405. Furthermore, section 264.408(c) of the Family Code provides "a law enforcement agency . . . may share with a [children's advocacy] center information that is confidential under Section 261.201 as needed to provide services" under chapter 264 of the Family Code. *Id.* § 264.408(c).

In this instance, the requestor is a representative of the Montgomery County Court Appointed Special Advocates ("CASA"). However, the requestor does not state whether the requested report is sought for the purposes of providing services under chapter 264 of the Family Code. Therefore, we must rule conditionally. If the constable's office determines the information at issue is needed to provide services under chapter 264 of the Family Code, then the constable's office generally has the discretion to release the information at issue to this requestor pursuant to section 264.408(c). We note information shared with or provided to CASA under section 264.408(c) retains its confidentiality under section 261.201 of the Family Code. *See id.* Although you raise section 552.108 of the Government Code for the submitted information, the requestor's specific statutory right of access prevails over the general exceptions in the Act. *See Open Records Decisions Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).* If, however, the constable's office determines the information at issue is not needed to provide services under chapter 264, then it may not release the information at issue on that

ground, and the constable's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201.<sup>1</sup>

However, portions of the information at issue are subject to sections 159.002 of the Occupations Code and 552.130 of the Government Code.<sup>2</sup> Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. 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.

Occ. Code § 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. 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). Upon review, we find some of the information at issue constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician. Therefore, the information we marked is generally confidential under the MPA.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find the

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<sup>1</sup>In this instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>2</sup>The 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).

information we marked is motor vehicle record information that is generally confidential under section 552.130 of the Government Code. We note section 552.130 is not a general exception under the Act because it has its own access provisions. *See* ORDs 613 at 4, 451 at 4.

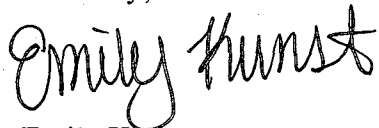
Thus, if the constable's office determines the information at issue is needed to provide services under chapter 264 of the Family Code, there is a conflict between the confidentiality provisions found in section 159.002 of the MPA and section 552.130 of the Government Code, and the access provided by section 264.408 of the Family Code. Where information falls within both general and specific statutory provisions, the specific provision prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 552.130 of the Government Code specifically protects motor vehicle record information and contains its own release provisions. The MPA specifically protects medical records. In contrast, section 264.408 allows designated types of entities to share with child advocacy centers information that is confidential under section 261.201 as needed to provide services under chapter 264 of the Family Code. *See* Fam. Code § 264.408(c). Accordingly, in this instance, we find section 159.002 of the MPA and section 552.130 of the Government Code are more specific statutes than section 264.408 of the Family Code. Thus, section 159.002 of the MPA and section 552.130 of the Government Code prevail over section 264.408 of the Family Code. Therefore, if the constable's office determines release of the submitted information is needed to provide services under chapter 264 of the Family Code, it has the discretion to release the information at issue to this requestor pursuant to section 264.408(c) but must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code and the information we marked under section 552.130 of the Government Code.

In summary, if the constable's office determines the information is needed to provide services under chapter 264 of the Family Code, then the constable's office has the discretion to release the submitted information to this requestor pursuant to section 264.408(c) of the Family Code. However, in releasing the submitted information, the constable's office must withhold the information we 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. If, however, the constable's office determines the submitted information is not needed to provide services under chapter 264 of the Family Code, then it may not release the information on that ground, and the constable's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst  
Attorney  
Open Records Division

EK/eb

Ref: ID# 671831

Enc. Submitted documents

c: Requestor  
(w/o enclosures)