



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Samantha Courtney
Hood County Sheriff's Office
400 Deputy Larry Miller Drive
Granbury, Texas 76048

OR2019-36215

Dear Ms. Courtney:

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# 803049 (Reference No. R19-01210)

The Hood County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified location. The sheriff's office states it will release some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses 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 [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 incident report numbers S1911397 and S1911400 were used or developed by the sheriff's office in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). Therefore, the information is within the scope of section 261.201 of the Family Code. Thus, this information is generally confidential under section 552.101 of the Government Code in conjunction with 261.201(a) of the Family Code.

Nevertheless, the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family Protective Services ("DFPS") in accordance with chapter 42 of the Human Resources Code. Pursuant to rules promulgated by DFPS under chapter 42 of the Human Resources Code, child-placing agencies are required to complete a foster home screening prior to verifying a foster home. *See* 26 T.A.C. § 749.2445(a); Hum. Res. Code § 42.042(a), (h)-(h-1) (executive commissioner shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies). Further, child-placing agencies are required to evaluate a foster home for compliance with licensing rules in certain instances. *See* 26 T.A.C. § 749.2801. Pursuant to section 749.2470, verifying a foster home includes completing and documenting the requirements set out in section 749.2447 of title 26 of the Texas Administrative Code. *Id.* § 749.2470(1); *cf.* Hum. Res. Code § 42.0561 (providing in part that "[b]efore a child-placing agency may issue a verification certificate for an agency foster home, the child-placing agency must obtain information relating to each family violence report at the applicant's residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by [DFPS]."). Section 749.2447(7) provides a child-placing agency must obtain, document, and assess, in part, the following information about a prospective foster home:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.] . . . With respect to law enforcement service call information, [the child-placing agency] *must do the following*:

(i) *Obtain service call information from the appropriate law enforcement agency for each of the prospective foster parents' addresses for the past two years.* Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.

...

(iii) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

26 T.A.C. § 749.2447(7)(B)(i), (iii) (emphasis added); *see also id.* §§ 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”), 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21), 749.2445(a). Thus, sections 749.2447(7) and 749.2470 of title 26 of the Texas Administrative Code require a child-placing agency to obtain all service call information for a two-year period for service calls to the addresses of prospective foster parents from appropriate law enforcement agencies. *See* 26 T.A.C. §§ 749.2470, .2447(7). Accordingly, we find a child-placing agency licensed by DFPS under chapter 42 of the Human Resources Code has a right of access to this information under section 749.2447(7) when it is obtained for the purpose of verifying a prospective foster home pursuant to the requirements of section 749.2470.

The requestor is seeking information involving prospective foster parents at their residence for the previous two years. Accordingly, the requestor generally has a right of access to the submitted information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. Although the sheriff’s office also seeks to withhold some of the submitted information under section 552.108 and common-law privacy, we note a specific statutory right of access overcomes general exceptions to disclosure in the Act and prevails over a claim under common-law privacy. *See* Open Records Decision No. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in statutory access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act); *see also Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code, the sheriff’s office may not withhold any portion of the submitted information under section 552.108(a)(1) of the Government Code or common-law privacy. Further, as noted above, section 261.201(a) states any release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). We find release of incident report numbers S1911397 and S1911400 to this requestor is for a purpose consistent with the Family Code. Thus, pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code, the sheriff’s office may not withhold incident report numbers S1911397 and S1911400 under section 552.101 in conjunction with section 261.201(a) of the Family Code.

We note a portion of the submitted information is subject to the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 552.101 also encompasses

information protected by the MPA. Section 159.002 of the MPA provides in relevant part the following:

(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 that is 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 marked constitutes information obtained from medical records. Accordingly, the information we marked is generally confidential under the MPA.

We also note some of the remaining information is subject to section 773.091 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides, in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Id. § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services ("EMS") records are deemed confidential under section 773.091. Upon review, we find the information we marked constitutes records of the

identity, evaluation, or treatment of a patient by EMS personnel. Thus, section 773.091 is generally applicable to the information we marked.

We further note portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 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 motor vehicle record information you marked, and the additional information we marked, is generally confidential under section 552.130.

As previously discussed, the requestor has a right of access to the submitted information under section 749.2447(7) of title 26 of the Texas Administrative Code. As also noted above, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* ORDs 613 at 4, 451 at 4 (specific statutory right of access provisions overcome Act's general exceptions to disclosure). Section 552.130 of the Government Code has its own access provisions. Therefore, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 749.2447(7) of title 26 of the Texas Administrative Code and the confidentiality provided by the MPA, section 773.091 of the Health and Safety Code, and section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *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 749.2447(7) of title 26 of the Texas Administrative Code generally allows DFPS access to reports for the purpose of verifying a current foster home. However, the MPA specifically protects medical records, section 773.091 of the Health and Safety Code specifically protects EMS records, and section 552.130 of the Government Code specifically protects motor vehicle record information. Therefore, we conclude the confidentiality provided under the MPA, section 773.091 of the Health and Safety Code, and section 552.130 of the Government Code is more specific than the access provided under section 749.2447(7). Thus, the sheriff's office must withhold (1) the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA; (2) except for the information specified in section 773.091(g), the information we marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code; and (3) the motor vehicle record information you marked, and the additional information we marked, under section 552.130 of the Government Code. The sheriff's office must release the remaining information to the requestor pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code.

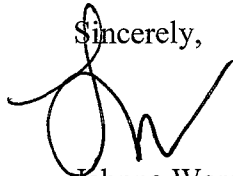
In summary, the sheriff's office must withhold (1) the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA; (2) except for the information specified in section 773.091(g) of the Occupations Code, the information we marked under section 552.101 of the Government Code in conjunction with

section 773.091 of the Health and Safety Code; and (3) the motor vehicle record information you marked, and the additional information we marked, under section 552.130 of the Government Code. The sheriff's office must release the remaining information to the requestor pursuant to section 749.2447(7) of title 26 of the Texas Administrative 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jahna Ward', with a large, stylized initial 'J' and 'W'.

Jahna Ward
Assistant Attorney General
Open Records Division

JW/be

Ref: ID# 803049

Enc. Submitted documents

c: Requestor
(w/o enclosures)