



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 2, 2020

Mr. Kent A. Brown
Assistant County Attorney
Nueces County
901 Leopard Street, Room 207
Corpus Christi, Texas 78401-3680

OR2020-15091

Dear Mr. Brown:

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# 831039 (Ref. No. 20-OR-036).

The Nueces County Medical Examiner's Office (the "examiner's office") received a request for all information pertaining to a named individual. 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. Section 552.101 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 Exhibit B constitutes medical records. Accordingly, the medical examiner's office must withhold Exhibit B under section 552.101 in conjunction with the MPA.¹

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

. . .

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

. . .

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, 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.

Fam. Code § 261.201(a), (h), (k). Upon review, we agree the remaining information, which we note is Exhibit C, was used or developed in an investigation of alleged or suspected child abuse or neglect. *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"

¹ We note this ruling does not affect an individual's right of access to his or her own medical records from the physician who provided treatment under the MPA, subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 159.004, .005, .006; *cf. Abbott v. Tex. State Bd of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA does not provide general right of access to medical records from governmental body responding to a request for information under the Public Information Act).

for purposes of section 261.201 as a 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). However, we note the information at issue is related to an investigation of alleged or suspected child abuse or neglect that may have occurred in a facility regulated under chapter 42 of the Human Resources Code. Section 261.201 does not apply to an investigation of child abuse or neglect that occurred in a home or facility regulated by the Texas Department of Family and Protective Services under chapter 42. *See id.* § 261.201(h). Thus, we must rule conditionally. If the incident at issue occurred at a child care facility regulated under chapter 42 of the Human Resources Code, section 261.201(a) of the Family Code is not applicable to Exhibit C, and the medical examiner's office may not withhold Exhibit C under section 552.101 on that basis. If the incident at issue did not occur at a child care facility regulated under chapter 42 of the Human Resources Code, Exhibit C is subject to section 261.201. In that case, we note the requestor is a representative of the parent of the child victim at issue, and that parent is not alleged to have committed the suspected abuse or neglect, and the medical examiner's office may not withhold Exhibit C from the requestor under section 552.101 on that basis. *Id.* § 261.201(k). Thus, in either instance, the medical examiner's office must release Exhibit C to this requestor.

In summary, the medical examiner's office must withhold Exhibit B under section 552.101 of the Government Code in conjunction with the MPA. The medical examiner's office must release Exhibit C to this requestor either pursuant to section 261.201(h) of the Family Code or section 261.201(k) 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 <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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/rm

Ref: ID# 831039

Enc. Submitted documents

c: Requestor
(w/o enclosures)