



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2004

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-9932

Dear Mr. Gambrell:

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# 213313.

The Houston Police Department (the "department") received a request for a specified report. You claim that the requested 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. We have also considered comments submitted by the requestor, asserting among other things that the requestor, Advocacy, Incorporated ("Advocacy"), has a special right of access under federal law to the information at issue. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Before reaching the requestor's special right of access argument, we must address whether the information at issue is subject to public release. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. We note, however, that section 58.007 does not apply where the information in question involves only a juvenile complainant or witness and not a juvenile suspect or offender. You have failed to explain, and we are unable to determine, that the submitted information involves juvenile suspects or offenders. Therefore, the submitted information is not confidential under section 58.007 of the Family Code, and it may not be withheld on this basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we agree that the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, section 552.108(a)(2) is applicable to this information.¹

Having reached the above conclusion, we next address the arguments of requestor Advocacy that it nevertheless has a special right of access to this information. Advocacy has been designated in Texas as the state protection and advocacy system (“P&A system”) for purposes of the federal Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI”), 42 U.S.C. §§ 10801-10851. *See* Attorney General Opinion JC-0461 (2002). Advocacy argues that this federal provision gives it a special right of access to the records at issue.

PAIMI provides, in relevant part, that Advocacy shall

¹As we are able to make this determination, we need not address your remaining arguments.

(4) in accordance with section 10806 of this title, have access to all records of -

(A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

(B) any individual (including an individual who has died or whose whereabouts are unknown) –

(i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access;

(ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(iii) with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities (either of which result from a complaint or other evidence) there is probable cause to believe that such individual has been subject to abuse or neglect; and

(C) any individual with a mental illness, who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy, whenever—

(i) such representative has been contacted by such system upon receipt of the name and address of such representative;

(ii) such system has offered assistance to such representative to resolve the situation; and

(iii) such representative has failed or refused to act on behalf of the individual[.]

42 U.S.C § 10805(a)(4)(A). PAIMI defines “records” to include the following:

reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

42 U.S.C. § 10806(b)(3)(A). The federal regulations promulgated under PAIMI further define “records” to include

(2) Reports prepared by an agency charged with investigating abuse neglect, or injury occurring at a facility rendering care or treatment, or by or for the facility itself, that describe any or all of the following:

- (i) Abuse, neglect, or injury occurring at the facility;
- (ii) The steps taken to investigate the incidents;
- (iii) Reports and records, including personnel records, prepared or maintained by the facility, in connection with such reports of incidents; or
- (iv) Supporting information that was relied upon in creating a report, including all information and records used or reviewed in preparing reports of abuse, neglect or injury such as records which describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings.

42 C.F.R. § 51.41(c)(2). We understand Advocacy to represent that the above requirements for Advocacy to have access to the records at issue are met in this case. The department provides this office no indication that the above-described requirements are not met. Upon review, we agree that the information at issue consists of records of an individual as defined by sections 10805(a)(4) and 10806(b)(3)(A), and thus, Advocacy has a right of access to the information under PAIMI. *See Center for Legal Advocacy v. Hammonds*, 323 F.3d 1262, 1270 (10th Cir. 2003) (phrase “all records of . . . any individual” in section 10805(a)(4)(A) is broad; rational reading is that it refers to records relating to or pertaining to an individual); *see also, id.* at 1268 n.7 (“Section 10806 amplifies and describes what kinds of records are included in those records to which a P&A System has access under §§ 10805 and 10806.”); *Robbins v. Budke*, 739 F.Supp. 1479, 1489 (D.N.M. 1990) (holding that “all records, including incident reports, medical referrals, seclusion and restraint logs, and internal investigation reports which may not be in residents’ charts” are subject to disclosure pursuant to sections 10805(a)(4) and 10806).

In summary, we conclude that Advocacy has a right of access to the submitted information under PAIMI. If the department receives a future request for this information from an individual other than Advocacy, the department should again seek our decision.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/WMM/jh

Ref: ID# 213313

Enc. Submitted documents

c: Ms. Lauren Richbourg
Advocacy, Incorporated
7457 Harwin Drive
Houston, Texas 77036
(w/o enclosures)

Ms. Beth Mitchell
Attorney at Law
Advocacy, Incorporated
7800 Shoal Creek Blvd., #171-E
Austin, Texas 78757
(w/o enclosures)