



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2006-07862

Dear Ms. Joe:

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# 253235.

The Travis County Sheriff's Office (the "sheriff's office") received two requests, from the same requestor, for all information regarding the alleged suicides of two named inmates. You state that you have released some of the requested information. You claim, however, that the marked portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 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, Advocacy, Incorporated ("Advocacy"). See Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Initially, we note that the requestor has agreed to exclude from its request any "government employee's home address, home telephone number, social security number, and family member information," any "driver's license information and vehicle identification numbers," and any "social security numbers." Thus, this information is not responsive to the instant request and need not be released. Moreover, we do not address such information in this ruling.

Next, we note the procedural requirements of the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state that the sheriff's office received the request on February 9, 2006. Accordingly, you were required to request a decision from us by February 24, 2006. However, you did not request a ruling from this office until May 1, 2006. Further, you did not submit the information required under section 552.301(e) by the fifteen day deadline. Consequently, we find that the sheriff's office failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). We note that section 552.101 of the Government Code can provide a compelling reason to overcome the presumption.

Before addressing the sheriff's office's claims under section 552.101 of the Government Code, we first address the arguments of the requestor, Advocacy, that it has a special right of access to all of the submitted information. Advocacy has been designated in Texas as the state protection and advocacy system ("P&A system") for the purposes of the federal Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI"), sections 10801 through 10851 of title 42 of the United States Code, and the Developmental Disabilities Assistance and Bill of Rights Act ("DDA"), sections 15041 through 15045 of title 42 of the United States Code. *See* Tex. Gov. Exec. Order No. DB-33, 2 Tex. Reg. 3713 (1977); Attorney General Opinion JC-0461 (2002); *see also* 42 CFR §§ 1386.19, .20 (defining "designated official" and requiring official to designate agency to be accountable for funds and conduct of P&A agency).

The PAIMI provides, in relevant part, that Advocacy, as the state's P&A system, shall

1) have the authority to--

(A) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred[.]

42 U.S.C § 10805(a)(1)(A). Further, the PAIMI provides that Advocacy shall . . . have access to all records of

(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 [P&A 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 [P&A 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[.]

42 U.S.C § 10805(a)(4)(B). The term “records” as used in the above-quoted section 10805(a)(4)(B) includes “reports prepared by any staff of a facility rendering care and treatment [to the individual] . . . that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents[.]” *Id.* § 10806(b)(3)(A); *see also* 42 C.F.R. § 51.41(c) (addressing scope of right of access under PAIMI). Here, the submitted documents consist of investigation information pertaining to the alleged suicides of the two named inmates. Further, the PAIMI defines the term “facilities” and state that the term “may include, but need not be limited to, hospitals, nursing homes, community facilities for individuals with mental illness, board and care homes, homeless shelters, and jails and prisons.” 42 U.S.C. § 10802(3).

In this case, Advocacy states that they have received a report that two named persons have allegedly died as a result of suicide while incarcerated in Travis County Jail. Advocacy explains that it intends to investigate these two alleged suicides for possible incidents of “abuse or neglect of an individual with a mental illness” as governed by PAIMI. Further, Advocacy explains that “based on [its] experience investigating possible incidents of abuse

and neglect, injury to and particularly the death of an individual with a disability at a facility raises a reasonable inference that abuse or neglect may have occurred.” See 42 C.F.R. § 51.2 (stating that the probable cause decision under PAIMI may be based on reasonable inference drawn from one’s experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect). Additionally, Advocacy explains that in cases where the individual may not clearly have a mental illness, Advocacy need only show that the facility from whom records were requested in the past or currently serves individuals with mental illness. See *Office of Protection and Advocacy for Persons with Disabilities v. Armstrong*, 266 F.Supp.2d 303, 314 (D.Conn. 2003) (finding that the agency did not have to make a threshold showing of mental illness before it can gain access to their records); *Michigan Prot. & Advocacy Serv., Inc. v. Miller*, 849 F.Supp. 1202, 1207 (W.D.Mich. 1994) (finding that evidence that a facility has previously housed individuals who are mentally ill, as well as evidence that some current residents may be mentally ill is sufficient under PAIMI to merit access). Here, Advocacy asserts that the Travis County jail system is a facility as defined by PAIMI that serves individuals with mental illness. Further, we note that submitted information indicates that the Travis County Jail was rendering care and treatment to the named inmates at issue.

Advocacy further asserts that, pursuant to federal law, any state confidentiality laws shall not restrict Advocacy’s right of access to the requested records. In this regard, we note that a state statute is preempted by federal law to the extent it conflicts with that federal law. See, e.g., *Equal Employment Opportunity Comm’n v. City of Orange*, 905 F. Supp 381, 382 (E.D. Tex. 1995). Further, federal regulations provide that state law must not diminish the required authority of a P&A system. See 45 CFR § 1386.21(f); see also *Iowa Prot. and Advocacy Services, Inc. v. Gerard*, 274 F.Supp.2d 1063 (N.D.Iowa 2003) (broad right of access under section 15043 of title 42 of United States Code applies despite existence of any state or local laws or regulations which attempt to restrict access; although state law may expand authority of P & A system, state law cannot diminish authority set forth in federal statutes); *Rasmussen*, 206 F.R.D. 630, 639 (S.D.Iowa 2001). Cf. 42 USC § 10806(b)(2)(C). Thus, in this instance, even though the sheriff’s office raises several state statute claims under section 552.101 of the Government Code for portions of the submitted information, they are preempted by PAIMI. Accordingly, based on Advocacy’s representations, we determine that Advocacy has a right of access to the submitted information pursuant to subsection (a)(1)(A) of section 10805 of title 42 the United States Code and the sheriff’s office must release the information at issue to the requestor.

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).

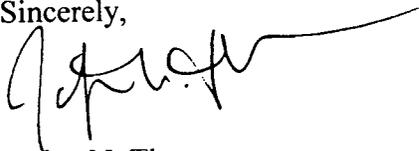
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/dh

Ref: ID# 253235

Enc. Submitted documents

c: Kathryn Lewis
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(w/o enclosures)