



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2009

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-05358

Dear Ms. Chang:

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# 340493.

The Houston Police Department (the "department") received a request for six categories of information related to a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 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 from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments concerning disclosure of requested information).

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. A compilation of an individual's criminal history is

also highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You argue that the present request requires the department to compile unspecified department records concerning the individual at issue. However, upon review of the submitted information, we find only one of the submitted reports involves the named individual as a suspect or arrestee. Further, upon review of comments submitted to this office by the requestor, we find that the requestor is specifically seeking this report. Therefore, we find that none of the submitted information may be withheld as a compilation of criminal history. We will, however, address your arguments under section 552.108 for this report and the remaining information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that portions of the submitted information relate to criminal investigations that are inactive pending additional leads. You further state that the respective statutes of limitations have not run on these investigations and that release of this information would interfere with the detection and investigation of the crimes. Based upon your representations and our review, we conclude that the release of Exhibits 3, 4, and 5 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree that section 552.108(a)(1) is applicable to Exhibits 3, 4, and 5.

Next, you claim the information in Exhibit 2 is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). 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. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the information in Exhibit 2 pertains to a concluded criminal investigation that did not result in

conviction or deferred adjudication. Based on your representations and our review, we conclude that section 552.108(a)(2) is applicable to the information in Exhibit 2.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Thus, the department must release basic information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold Exhibits 2, 3, 4, and 5 pursuant to sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.<sup>1</sup>

We note, however, that the requestor has a potential right of access to the submitted information under federal law. Such a right of access, if applicable, would preempt the protection afforded by common-law privacy in conjunction with section 552.101 of the Government Code, as well as section 552.108. See U.S. Const. art. VI, cl. 2 (Supremacy Clause); *Delta Airlines, Inc. v. Black*, 116 S.W.3d 745, 748 (Tex. 2003) (discussing federal preemption of state law). In this instance, the requestor is a representative of Advocacy, Inc. (“Advocacy”), which has been designated as the state’s protection and advocacy system (“P&A system”) for purposes of the federal Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI Act”), 42 U.S.C. §§ 10801-10851, the Developmental Disabilities Assistance and Bill of Rights Act (“DDA Act”), 42 U.S.C. §§ 15041-15045, and the Protection and Advocacy of Individual Rights Act (“PAIR Act”), 29 U.S.C. § 794e. See Tex. Gov. Exec. Order No. DB-33, 2 Tex. Reg. 3713 (1977); Attorney General Opinion JC-0461 (2002); see also 42 CFR §§ 51.2 (defining “designated official” and requiring official to designate agency to be accountable for funds of P&A agency), 51.22 (requiring P&A agency to have a governing authority responsible for control).

The PAIMI Act provides, in relevant part, that a P&A system “shall . . . have access to all records of . . . any individual who is a client of the system if such individual . . . has authorized the system to have such access[.]” 42 U.S.C. § 10805(a)(4)(A). The term “records” as used in the above-quoted provision

includes reports prepared by any staff of a facility rendering care and treatment [to the individual] 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.

---

<sup>1</sup>As our ruling is dispositive regarding this information, we need not address your remaining arguments against the disclosure of this information.

*Id.* § 10806(b)(3)(A). The DDA Act provides, in relevant part, that a P&A system shall

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

...

(I) have access to all records of –

(I) any individual with a developmental disability 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[.]

(J)

(I) have access to the records of individuals described in subparagraphs (B) and (I), and other records that are relevant to conducting an investigation, under the circumstances described in those subparagraphs, not later than 3 business days after the [P&A system] makes a written request for the records involved[.]

42 U.S.C § 15043(a)(2)(B), (I)(I), (J)(I). The DDA Act states that the term “record” includes

(1) a report prepared or received by any staff at any location at which services, supports, or other assistance is provided to individuals with developmental disabilities;

(2) a report prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury, or death occurring at such location, that describes such incidents and the steps taken to investigate such incidents; and

(3) a discharge planning record.

*Id.* § 15043(c). The PAIR Act provides, in relevant part, that a P & A system will “have the same . . . access to records and program income, as are set forth in [the DDA Act].” 29 U.S.C. § 794e (f)(2).

The PAIMI Act and the DDA Act grant a P&A system, under certain circumstances, access to “records.” Each of the acts has a separate, but similar, definition of “records.” The principal issue which we must address in this instance is whether the submitted information

constitutes a “record” under either of those acts. In this instance, the submitted information consists of criminal law enforcement records that are being utilized for law enforcement purposes. We note that the submitted information is not among the information specifically listed as a “record” in sections 10806(b)(3)(A) and 15043(c).<sup>2</sup> By these statutes’ plain language, access is limited to “records.” *See In re M&S Grading, Inc.*, 457 F.3d 898, 901 (8<sup>th</sup> Cir. 2000) (analysis of a statute must begin with the plain language). Although the two definitions of “records” are not limited to the information specifically enumerated in those clauses, we do not believe that Congress intended for the definitions to be so expansive as to grant a P&A system access to any information it deems necessary. Such a reading of the statutes would render sections 10806(b)(3)(A) and 15043(c) insignificant. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (statute should be construed in a way that no clause, sentence, or word shall be superfluous, void, or insignificant). Furthermore, in light of Congress’s evident preference for limiting the scope of access, we are unwilling to assume that Congress meant more than it said in enacting the PAIMI Act and the DDA Act. *See Kofa v. INS*, 60 F.3d 1084 (4<sup>th</sup> Cir. 1995) (stating that statutory construction must begin with language of statute; to do otherwise would assume that Congress does not express its intent in words of statutes, but only by way of legislative history); *see generally Coast Alliance v. Babbitt*, 6 F. Supp. 2d 29 (D.D.C. 1998) (stating that if, in following Congress’s plain language in statute, agency cannot carry out Congress’s intent, remedy is not to distort or ignore Congress’s words, but rather to ask Congress to address problem).

Based on the above analysis, we believe that the information specifically enumerated in sections 10806(b)(3)(A) and 15043(c) is indicative of the types of information to which Congress intended to grant a P&A system access. *See Penn. Protection & Advocacy Inc. v. Houstoun*, 228 F.3d 423, 426 n.1 (3<sup>rd</sup> Cir. 2000) (“[I]t is clear that the definition of “records” in § 10806 controls the types of records to which [the P&A agency] ‘shall have access’ under § 10805[.]”). As previously noted, the submitted information is not among the information specifically listed as “records” in sections 10806(b)(3)(A) and 15043(c). Furthermore, we find that the submitted information is not the type of information to which Congress intended to grant a P&A system access. Accordingly, we find that Advocacy does not have a right of access to the submitted information under either the PAIMI Act or the DDA Act.

In summary, with the exception of basic information, which must be released, the department may withhold Exhibits 2, 3, 4, and 5 pursuant to sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.<sup>3</sup>

---

<sup>2</sup>Use of the term “includes” in sections 10806(b)(3)(A) and 15043(c) of title 42 of the United States Code indicates that the definitions of “records” are not limited to the information specifically listed in those sections. *See St. Paul Mercury Ins. Co. v. Lexington Ins. Co.*, 78 F.3d 202 (5<sup>th</sup> Cir. 1996); *see also* 42 C.F.R. § 51.41.

<sup>3</sup>We note that the basic information to be released contains information that implicates the privacy interests of the named individual. However, section 552.023 of the Government Code gives a person or the person’s authorized representative a special right of access to information that is excepted from public

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 340493

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

disclosure under laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. We find that the present requestor is the named individual's authorized representative. Accordingly, the requestor has a right of access to this information under section 552.023 of the Government Code. Further, we note basic information includes a suspect's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. However, because the requestor has a right of access to certain information pertaining to the named individual under section 552.023, the social security number of the named individual may not be withheld under section 552.147(b). If the department receives another request for this information, it should again seek a decision from this office.