



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2009

Mr. Charles K. Eldred
Public Information Coordinator
Texas Youth Commission
P. O. Box 4260
Austin, Texas 78765

OR2009-14948

Dear Mr. Eldred:

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# 358899.

The Texas Youth Commission ("TYC") received a request for "any and all investigative records" regarding the death of a named individual while in TYC custody. You state some of the requested information has been provided to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor, Advocacy, Inc. ("Advocacy"). *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Although you represent that the submitted investigation documents are excepted under section 552.108 of the Government Code, we note that the requestor is a representative of Advocacy who claims that she has a right of access to the requested information under federal law.

¹Although you also raise section 552.101 of the Government Code, you have submitted no arguments in support of the applicability of this exception to disclosure. Therefore, we assume you no longer claim section 552.101. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why claimed exceptions to disclosure apply).

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

(4) . . . 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[.]

Id. § 10805(a)(4)(B)(i)-(iii). 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). Further, the PAIMI defines the term “facilities” and states 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, and the information reflects, that the named individual suffered from mental illness, and that Advocacy received information asserting the named individual died while he was a resident of the Crockett State School facility of the TYC. Advocacy explains that it intends to investigate this death for possible incidents of abuse or neglect of an individual with a mental illness as governed by the PAIMI. Advocacy further explains that the “history and the current ongoing reform efforts of TYC as well as initial circumstances surrounding [the named individual’s] death provided Advocacy with sufficient probable cause to investigate [the named individual’s] death for possible abuse or neglect.” *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). Advocacy asserts that the Crockett State School is a facility as defined by the PAIMI that serves individuals with mental illness. Further, we note the submitted information indicates that the Crockett State School was rendering care and treatment to the named individual at issue.

Finally, Advocacy 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); *Iowa Protection and Advocacy Services, Inc. v. Rasmussen*, 206 F.R.D. 630, 639 (S.D.Iowa 2001). *Cf.* 42 USC § 10806(b)(2)(C). Thus, in this instance, even though TYC claims an exception to disclosure of the submitted investigation documents under section 552.108 of the Government Code, this claim is preempted by the PAIMI. Accordingly, based on Advocacy’s representations, we determine that Advocacy has a right of access to the submitted information pursuant to subsections (a)(1)(A) and (a)(4)(B) of section 10805 of title 42 the United States Code, and TYC must release this information to the requestor.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 358899

Enc. Submitted documents

c: Requestor
(w/o enclosures)