ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2010

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2010-18180

Dear Mr. Walker:

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# 402253 (ORR# 2010-3841).

The Montgomery County Sheriff's Office (the "sheriff") received a request for ten categories of information pertaining to a named individual. You state you have or will release most of the requested information to the requestor. You claim 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 received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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[.]" *Id.* § 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 inform us, and provide an

[1]Although you also raise section 552.101 of the Government Code, you provide no arguments explaining how this exception is applicable to the submitted information. Thus, we presume you have withdrawn your claim under this exception. *See* Gov't Code §§ 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested), .302.

affidavit from the Montgomery County District Attorney's Office stating, the submitted information relates to a pending prosecution. Based on these representations and our review, we conclude the release of the submitted information 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 the submitted information.

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. We note that the basic information described in *Houston Chronicle* does not include Texas motor vehicle record information subject to section 552.130 of the Government Code or the social security number of a complainant. Therefore, with the exception of basic information, the sheriff may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

We note, however, the requestor contends she has a right of access to the submitted information under federal law. Such a right of access, if applicable, would preempt the protection afforded by section 552.108 of the Government Code. *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 C.F.R. §§ 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.

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, the DDA Act, and the PAIR 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).

Advocacy contends, however, the information listed in sections 10806(b)(3)(A) and 15043(c) was not meant to be an exhaustive list.[2] The requestor contends it was Congress's intent to grant a P&A system access to any and all information, including the particular information at issue here, the P&A system deems necessary to conduct an investigation. We disagree. By these statutes' plain language, access is limited to "records." *See In re M&S Grading, Inc.*, 457 F.3d 898, 901 (8th 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 (4th 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 (3rd 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 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 addition, because the PAIR Act grants the same access as the DDA Act, Advocacy does not have a right of access under the PAIR Act. We therefore conclude that, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.[3]

---

[2]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 (5th Cir. 1996); *see also* 42 C.F.R. § 51.41.

[3]We note basic information includes the arrestee'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

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,

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/bs

Ref: ID# 402253

Enc. Submitted documents

c: Requestor
(w/o enclosures)

---

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). *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). If the sheriff receives another request for this information, it should again seek a decision from this office.