



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2011

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

OR2011-02126

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# 408990 (TYC # ORR 15831, 15832, 15833, 15834, and 15835).

The Texas Youth Commission (the "commission") received a request for records pertaining to five named individuals. You state the commission has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ 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).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section

¹We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

encompasses information protected by other statutes. The relevant language of section 58.007(c) of the Family Code 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 Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(2); *see id.* § 51.03(a)–(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3

of Family Code). Upon review, we find the report for case no. IG10-4106 consists of law enforcement records involving a juvenile suspect. However, we note the requestor is the authorized representative of the juvenile suspect in the report for case no. IG10-4106. Under section 58.007(e), the requestor has a right to inspect or copy law enforcement records pertaining to his client. *See id.* § 58.007(e). However, section 58.007(j)(2) of the Family Code states that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Accordingly, we will address your arguments under section 552.108 of the Government Code for the report for case no. IG10-4106 along with the remaining information at issue.

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 indicate the reports for case nos. IG09-2657, IG10-3577, IG10-3589, and IG10-4106 relate to pending prosecutions by the Special Prosecutions Unit of the commission’s Office of the Inspector General. Based on these representations and our review, we conclude the release of the reports for case nos. IG09-2657, IG10-3577, IG10-3589, and IG10-4106 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we conclude section 552.108(a)(1) is applicable to the reports for case nos. IG09-2657, IG10-3577, IG10-3589, and IG10-4106 under section 552.108(a)(1) of the Government Code.

We note, and you acknowledge, 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). Basic information refers to the information held to be public in *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). Accordingly, except for the basic information, the commission may withhold the reports for case nos. IG09-2657, IG10-3577, IG10-3589, and IG10-4106 under section 552.108(a)(1) of the Government Code.

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. 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. *Id.* Although you assert the report for case no. IG09-2130 did not result in a conviction or deferred adjudication, we note exhibit B indicates case no. IG09-2130 did

result in conviction. Therefore, we determine the commission has failed to demonstrate case no. IG09-2130 did not result in conviction or deferred adjudication. Accordingly, the commission may not withhold the report for case no. IG09-2130 under section 552.108(a)(2) of the Government Code.

We note the report for case no. IG09-2130 contains information that is excepted from disclosure under section 552.102(a) of the Government Code.² Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the report for case no. IG09-2130, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

We also note the report for case no. IG09-2130 contains information that may be confidential under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employees whose information is at issue timely elected to keep their personal information confidential pursuant to section 552.024, the commission must withhold the information we have marked in the report for case no. IG09-2130 under section 552.117(a)(1) of the Government Code. The commission may not withhold this information under section 552.117 if the employees did not make timely elections to keep the information confidential.³

The requestor contends Advocacy has a right of access to the information at issue under section 107.006 of the Family Code. Section 107.006 provides in pertinent part:

²The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

³Regardless of the applicability of section 552.117, 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. Gov't Code § 552.147(b).

(a) . . . [I]n conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem . . . to have immediate access to the child and any information relating to the child.

(b) Without requiring a further order or release, the custodian of any relevant records relating to the child, including records regarding social services, law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child is a beneficiary, shall provide access to a person authorized to access the records under Subsection (a).

Fam. Code § 107.006(a), (b). The requestor states that Advocacy serves as the attorney ad litem for each of the individuals in the reports at issue. We note, however, that section 107.006 applies to an attorney ad litem engaged in a suit affecting the parent-child relationship. *See id.* The requestor has not stated and the documents do not reflect that Advocacy represents the named individuals in the context of suits affecting the parent-child relationship. Accordingly, we find the requestor has not established that Advocacy has a right of access to the information at issue under section 107.006 of the Family Code.

The requestor also contends Advocacy has a right of access to the information at issue under section 552.023 of the Government Code as the authorized representative of the named individuals. Section 552.023 provides in pertinent part that “a person’s authorized representative has a special right of access . . . to information held by a governmental body . . . that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a). We note, however, a governmental body may assert as grounds for denial of access other provisions of the Act or other law that is not intended to protect the person’s privacy interests. *See id.* § 552.023(b). The commission is withholding the reports for case nos. IG09-2657, IG10-3577, IG10-3589, and IG10-4106 under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) of the Government Code allows for the withholding of law enforcement records to prevent interference in the detection, investigation, or prosecution of crime. Thus, section 552.108(a)(1) protects law enforcement interests, not privacy interests. Additionally, the information we have marked in the report for case no. IG09-2130 does not pertain to any of the named individuals. Thus, we find the requestor has failed to demonstrate that Advocacy has a right of access under section 552.023 of the Government Code to the reports for case nos. IG09-2657, IG10-3577, IG10-3589, and IG10-4106, and the information we have marked in the report for case no. IG09-2130.

The requestor also contends Advocacy has a right of access to the information at issue under federal law. In this instance, the requestor is a representative of 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, and the Developmental Disabilities Assistance and Bill of Rights Act (“DDA Act”), 42 U.S.C. §§ 15041-15045. *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). We note 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 state law must not diminish the required authority of a P&A system. *See* 45 C.F.R. § 1386.21(f); *see also Iowa Prot. & Advocacy Servs., 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 Prot. & Advocacy Servs., Inc. v. Rasmussen*, 206 F.R.D-630, 639 (S.D.Iowa 2001). Similarly, Texas law states, “[n]otwithstanding other state law, [a P&A system] . . . is entitled to access to records relating to persons with mental illness to the extent authorized by federal law.” Health & Safety Code § 615.002(a). Thus, a right of access under the PAIMI Act or the DDA Act, if applicable, would preempt the protection afforded by sections 552.102, 552.108, and 552.117 of the Government Code.

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 Advocacy shall

(4) . . . 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[.]

Id. § 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 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); *see also* 42 C.F.R. § 51.41(c) (addressing P&A system's access to records under PAIMI). 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 system makes a written request for the records involved[.]

42 U.S.C. § 15043(a)(2)(B), (I)(ii), (J)(i). The DDA Act states 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[.]

Id. § 15043(c)(1)-(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 information at issue constitutes "records" under either of those acts. In this instance, the information at issue consists of criminal law enforcement records that are being utilized for law enforcement purposes. We note that this information is not among the information specifically listed as a "record" in sections 10806(b)(3)(A) and 15043(c). 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 statute must begin with 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 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 statutory construction must begin with language of statute; to do otherwise would assume 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, 37 (D.D.C. 1998) (stating 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 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, these criminal law enforcement records are not among the information specifically listed as "records" in sections 10806(b)(3)(A) and 15043(c). Furthermore, we find these criminal law enforcement records are 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 case nos. IG09-2657, IG10-3577, IG10-3589, and IG10-4106 as well as the information we have marked in the report for case no. IG09-2130 under either the PAIMI Act or the DDA Act.

In summary, except for basic information, the commission may withhold the reports for case nos. IG09-2657, IG10-3577, IG10-3589, and IG10-4106 under section 552.108(a)(1) of the Government Code. The commission must withhold the information we have marked in the report for case no. IG09-2130 under section 552.102(a) of the Government Code. If the employees of the commission timely elected to keep their personal information confidential pursuant to section 552.024 of the Government Code, the commission must withhold the information we have marked in the report for case no. IG09-2130 under section 552.117(a)(1) of the Government Code. The commission may not withhold this information under section 552.117(a)(1) if the employees did not make timely elections to

keep the information confidential. The remaining information must be released to the requestor.⁴

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 408990

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because the requestor has a right of access to his client's information in the report for case no. IG09-2130 that otherwise would be private under the Act, the commission must again seek a decision from this office if it receives a request for this information from a different requestor.