



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2011

Ms. Erin A. Higginbotham
For Dallas County Hospital District
Denton, Navarro, Rocha & Bernal
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2011-15635

Dear Ms. Higginbotham:

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# 434199.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for all records, including complaints and investigations, concerning a named individual. You state the district has released some of the information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 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. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 161.032 of the Health and Safety Code, which provides, in part:

- (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

...

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].

...

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(a), (c), (f). For purposes of this confidentiality provision, a “‘medical committee’ includes any committee, including a joint committee, of . . . a hospital [or] a medical organization [or] hospital district[.]” *Id.* § 161.031(a). Section 161.0315 provides, in relevant part, that “[t]he governing body of a hospital, medical organization [or] hospital district . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services[.]” *Id.* § 161.0315(a).

The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *See, e.g., Memorial Hosp.—The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986). These cases establish that “documents generated by the committee in order to conduct open and thorough review” are confidential. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Jordan*, 701 S.W.2d at 647-48. Protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *Id.* at 648; *see also* Open Records Decision No. 591 (1991) (construing, among other statutes, statutory predecessor to section 161.032).

The district’s board of managers (the “board”) is appointed by the Dallas County Commissioners Court with the responsibility of managing, controlling, and administering the district. You state one of the board’s responsibilities is “[t]o establish, support, and oversee a system-wide performance improvement program.” You inform us that, in furtherance of this duty, the board maintains overall responsibility for the implementation and maintenance of the Patient Complaint and Grievance Policy, which provides a procedure for responding to patient complaints. However, the board has authorized administrators and medical staff to execute the procedures necessary to carry out quality and performance improvement activities. You explain when a complaint is made, a designated employee gathers

information regarding the complaint and reviews the information before making a recommendation and reporting it to the board's Quality Improvement Committee ("committee"). We understand the committee reviews staff recommendations in order to prevent adverse events from recurring. You explain the submitted information was prepared for review by the committee and was not created in the ordinary course of business. Based on your representations and our review, we find the submitted information consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code.

The requestor, however, is a representative of Disability Rights Texas ("DRT"), formerly known as Advocacy, Inc., which has been designated as the state's 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. *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. §§ 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 DRT, 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 [P&A 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 DRT shall

(4) in accordance with section 10806 of this title, have access to all records of—

(A) any individual who is a client of the [P&A system] if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the [P&A system] to have such access;

(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; and

(C) any individual with a mental illness, who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the [P&A system] or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy, whenever—

(i) such representative has been contacted by such system upon receipt of the name and address of such representative;

(ii) such system has offered assistance to such representative to resolve the situation; and

(iii) such representative has failed or refused to act on behalf of the individual[.]

Id. § 10805(a)(4). The term “records” as used in the above-quoted section 10805(a)(4) “includes reports prepared by any staff of a facility rendering care and treatment . . . 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 the term “may include, but need not be limited to, hospitals . . . jails and prisons.” 42 U.S.C. § 10802(3).

In this case, the information reflects the named individual has a mental illness and that DRT received information that the named individual was injured while he was a district patient. DRT explains that it intends to investigate this injury for possible incidents of abuse or neglect of an individual with a mental illness as governed by PAIMI. Further, DRT asserts the individual at issue does not have a legal guardian, conservator, or other legal representative acting on his behalf with regard to the investigation of possible abuse and

neglect. Additionally, DRT states it has probable cause to believe the individual's injury may have been the result of abuse and 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).

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 that 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 the 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); *cf.* 42 U.S.C. § 10806(b)(2)(C). 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, PAIMI grants DRT access to "records," and to the extent state law provides for the confidentiality of "records" requested by DRT, its federal right of access under PAIMI preempts state law. *See* 42 C.F.R. § 51.41(c); *see also Equal Employment Opportunity Comm'n*, 905 F. Supp. at 382. Accordingly, we must address whether the submitted information constitutes "records" of an individual with mental illness as defined by PAIMI.

Although the definition of "records" is not limited to the information specifically described in section 10806(b)(3)(A) of title 42 of the United States Code, we do not believe Congress intended for the definition to be so expansive as to grant a P&A system access to any information it deems necessary.¹ Such a reading of the statute would render it 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 PAIMI. *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 this analysis,

¹Use of the term "includes" in section 10806(b)(3)(A) of title 42 of the United States Code indicates the definition of "records" is not limited to the information specifically listed in that section. *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.

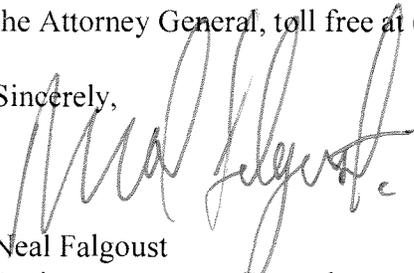
we believe the information specifically described in section 10806(b)(3)(A) is indicative of the types of information to which Congress intended to grant a P&A system access. *See Penn. Protection & Advocacy Inc. v. Houstoun*, 228 F.3d 423, 426 n.1 (3rd Cir. 2000) (“[I]t is clear that the definition of “records” in § 10806 controls the types of records to which [the P&A agency] ‘shall have access’ under § 10805[.]”). Upon review, we find the submitted information consists of a complaint summary report prepared by the district’s staff that describes an alleged incident of abuse, neglect, or injury involving the person who is the subject of DRT’s request. Thus, the submitted information consists of “records,” as contemplated by section 10806(b)(3)(A) of title 42 of the United States Code.

Although the district claims confidentiality under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code for the submitted information, we find this claim is preempted by PAIMI. Furthermore, we note the district’s claim under section 552.103 of the Government Code is also preempted by PAIMI. Therefore, based on DRT’s representations, we determine DRT has a right of access to this information pursuant to subsection (a)(1)(A) of section 10805 of title 42 the United States Code, and the district must release it to the requestor.²

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

²We note the requestor has a special right of access to the submitted information under federal law. Therefore, if the requestor received another request for this same information from a different requestor, it must again seek a ruling from our office.

Ref: ID# 434199

Enc. Submitted documents

c: Requestor
(w/o enclosures)