ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2006

Mr. Robert K. Nordhaus
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2006-04846

Dear Mr. Nordhaus:

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# 248740.

The San Antonio Police Department (the "department") received a request for offense reports pertaining to a named individual and a specific incident. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal prosecution. Based upon your representations, we conclude that the release of the information at issue 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).

We note, however, that basic information about an arrested person rrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 108(c). Such basic information refers to the information held to be public in *Housto onicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of informatic sidered to be basic information). Thus, with the exception of basic information, the d nent may withhold the submitted information from disclosure pursuant to section 552)(1).

We note that the requestor in this instance is Advocacy, Incorporat dvocacy"), which has been designated in Texas as the state protection and advocacy n ("P&A system") for purposes of the federal Protection and Advocacy for Individual Mental Illness Act ("PAIMI Act"), 42 U.S.C. §§ 10801-10851. *See* Attorney General (n JC-0461 (2002).

The PAIMI Act provides, in relevant part, that Advocacy

> shall . . . have access to all records of
>
> > (B) any individual (including an individual has died or whose whereabouts are unknown);
> >
> > > (i) who by reason of the mental or p l condition of such individual is unable to aut the [P&A system] to have such access;
> > >
> > > (ii) who does not have a legal guar onservator, or other legal representative, or fo m the legal guardian is the State; and
> > >
> > > (iii) with respect to whom a con t has been received by the [P&A system] o respect to whom as a result of monitoring o r activities (either of which result from a co nt or other evidence) there is probable cause to ve that such individual has been subject to abus eglect[.]

42 U.S.C § 10805(a)(4)(B). The term "records" as use the above-quoted section 10805(a)(4)(B) includes "reports prepared by any staff of a f rendering care and treatment [to the individual] . . . that describe incidents of ab neglect, and injury *occurring at such facility* and the steps taken to investigate incidents[.]" *Id.* § 10806(b)(3)(A) (emphasis added). Based upon our review of the rds at issue, we find that they do not meet this definition because they consist of an igation of possible criminal conduct on the part of the named individual. Accordin e conclude that the submitted information does not consist of "records" to which Ad y is granted access under section 10805(a)(4)(B) of the PAIMI Act. Consequently, cacy has no special

right of access to the submitted records, and the department may withhold them pursuant to section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007. As our ruling is dispositive, we need not address your remaining argument against disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Anne Prentice
Assistant Attorney General
Open Records Division

AP/er

Ref: ID# 248740

Enc. Submitted documents

c: Ms. Cynthia Alonzo
Advocate
Advocacy, Incorporated
McAllen Satellite Office
1418 Beech Street, Suite 113
McAllen, Texas 78501
(w/o enclosures)