



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2006

Mr. Robert E. Etlinger  
Assistant County Attorney  
Guadalupe County  
101 East Court Street, Suite 104  
Seguin, Texas 78155-5779

OR2006-11686

Dear Mr. Etlinger:

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# 261309.

The Guadalupe County Sheriff's Office (the "sheriff") received a request for information pertaining to a named former inmate of the Guadalupe County Jail. You state that the sheriff is not required to comply with the request pursuant to section 552.028 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note that the requestor is a Senior Advocate with Advocacy, Incorporated ("Advocacy"). Advocacy has been designated in Texas as the state 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. See Attorney General Opinion JC-0461 (2002).

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 . . . 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[.]

42 U.S.C. § 10805(a)(4)(B). The term “records” as used in the above-quoted section 10805(a)(4)(B) includes “a report 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). Further, the PAIMI Act 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). Upon review, we find that the submitted information constitutes records for purposes of the PAIMI Act. The Guadalupe County Jail is a facility as defined by PAIMI that serves individuals with mental illness, and the submitted information indicates that the Guadalupe County Jail was rendering care and treatment to the named inmate at issue.

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. & 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). *Cf.* 42 USC § 10806(b)(2)(C). Therefore, to the extent Advocacy made the present request as part of an investigation under the PAIMI Act, the requestor has a right of access to the submitted

information and it must be released to her. To the extent the request was not made under such an investigation, we will consider the sheriff's arguments.

Section 552.028(a) of the Government Code provides that a governmental body is not required to accept or comply with a request for information from either of the following:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

Gov't Code § 552.028(a). You state that the request for information was made by the agent of an individual imprisoned in a correctional facility. You further state that the requestor is not the individual's attorney. Thus, you argue that the sheriff is not required to respond to the request. We note that the requestor states that she has been authorized by the former inmate to receive the former inmate's confidential information. Based upon your representation and our review of the request and the submitted information, we agree, and conclude that the sheriff need not respond to the request for information pursuant to section 552.028(a)(2) of the Government Code.

In summary, to the extent the present request for information was made as part of an investigation under the PAIMI Act, the requestor has a right of access to the submitted information and it must be released to her. If the request was not made as part of such an investigation, the sheriff need not respond to the request pursuant to section 552.028 of the Government Code.

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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/dh

Ref: ID# 261309

Enc. Submitted documents

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