



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 6, 2007

Mr. Tim Curry  
Criminal District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2007-14561

Dear Mr. Curry:

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# 294011.

The Tarrant County Sheriff's Department (the "sheriff") received a request for all information related to the death of a named inmate. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. 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 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 makes confidential information that is subject to state statutes and common-law privacy. Although you represent that portions of the submitted information are confidential under state statutes or common-law privacy, we note that the requestor is a representative of Advocacy who claims that she has a right of access to the requested information under federal law.

Advocacy has been designated in Texas as the state 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, and the Developmental Disabilities Assistance and Bill of Rights Act (“DDA”), sections 15041 through 15045 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 CFR §§ 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 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 “reports 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); *see also* 42 C.F.R. § 51.41(c) (addressing scope of right of access under

PAIMI). Here, the submitted documents consist of investigation information pertaining to the death of the named inmate. Further, the PAIMI defines the term “facilities” and state 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).

In this case, Advocacy states, and the information reflects, that the named inmate suffered from mental illness, and that Advocacy received information that the named individual died while an inmate in the Tarrant County Jail. Advocacy explains that it intends to investigate this death for possible incidents of abuse or neglect of an individual with a mental illness as governed by PAIMI. Further, Advocacy explains that “based on [its] experience investigating possible incidents of abuse and neglect, injury to and particularly the death of an individual with a disability at a facility raises a reasonable inference that abuse or neglect may have occurred.” 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).

Advocacy also asserts that the individual at issue is now deceased and does not have a legal guardian, conservator, or other legal representative, and thus, pursuant to section 10805(a)(4)(B)(ii) it has access to all of this inmate’s records. 42 U.S.C. § 10805(a)(4)(B)(ii). Although the sheriff states that the individual at issue is survived by her husband, the sheriff fails to demonstrate that the husband is the legal representative of the inmate at issue. Furthermore, attempts by the sheriff to locate or contact the husband have failed.

Finally, Advocacy asserts that, 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. and Advocacy Services, 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); *Rasmussen*, 206 F.R.D. 630, 639 (S.D.Iowa 2001). Cf. 42 USC § 10806(b)(2)(C). Thus, in this instance, even though the sheriff’s office claims exceptions to disclosure for portions of the submitted information under section 552.101 of the Government Code in conjunction with state statutes and common-law, all of the asserted claims are preempted by PAIMI. Accordingly, based on Advocacy’s representations, we determine that Advocacy has a right of access to the submitted information pursuant to subsection (a)(1)(A) of section 10805 of

title 42 the United States Code, and the sheriff's office must release the information at issue to the requestor.

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).

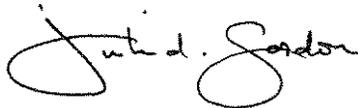
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink that reads "Justin D. Gordon". The signature is written in a cursive style with a large, looping initial "J".

Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/jh

Ref: ID# 294011

Enc. Submitted documents

c: Ms. Christine Smith  
Advocacy Incorporated  
1500 McGowen, Suite 100  
Houston, Texas 77004  
(w/o enclosures)