



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 11, 2010

Mr. Randy A. Stoneroad  
Deputy City Attorney  
City of Temple  
2 North Main Street Suite 308  
Temple, Texas 76501

OR2010-03515

Dear Mr. Stoneroad:

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# 372416.

The Temple Police Department (the "department") received a request for all records pertaining to a named individual over a specified time period. You state you will release some of the requested 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 information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge portions of the requested information were the subject of a previous request received by the department, as a result of which this office issued Open Records Letter No. 2009-17500 (2009). We note that one of the requestors in the previous request is the same requestor at issue in the present request. However, we note the requestor in the present request now asserts a potential right of access to the information that was previously ruled upon by this office. Additionally, the department now states that the criminal investigation pertaining to incident report number 09008424 has since concluded and did not result in a conviction or a deferred adjudication. Thus, you acknowledge the facts and circumstances have changed with regards to the information at issue since the issuance of the previous ruling, and the department may not continue to rely on Open

Records Letter No. 2009-17500 as a previous determination for this information. *See* Open Records Decision No. 673 (2001). Accordingly, we will address the submitted arguments against disclosure of the entirety of the submitted information.

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 state that incident report numbers 08007671, 09008358, 09008364, 09011702, 06003891, 07012155, and 07013837 relate to pending criminal investigations. Based on your representations and our review of the reports at issue, we conclude that the department has demonstrated that release of incident report numbers 08007671, 09008358, 09008364, 09011702, 07012155, and 07013837 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). Accordingly, we agree that section 552.108(a)(1) is applicable to incident report numbers 08007671, 09008358, 09008364, 09011702, 07012155, and 07013837.

However, we note incident report number 06003891 relates to an investigation of a motor vehicle burglary. The events that gave rise to this investigation occurred on April 9, 2006. The longest possible statute of limitations for the offense described in this report is two years. *See* Pen. Code § 30.04(d) (burglary of motor vehicle is Class A misdemeanor); Crim. Proc. Code art. 12.01(6) (indictment or information on misdemeanor may be presented within two years from date of commission of offense, and not afterward). With regard to incident report number 06003891, you have neither informed this office any criminal charges were filed within the limitations period nor have you explained how release of the information would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has run. Thus, the department has not shown the applicability of section 552.108(a)(1) to incident report number 06003891. As you raise no further exceptions to disclosure of this report, it must be released to the requestor.

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. *See* 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .302(e)(1)(A). You state that incident report numbers 08005757, 08005869, 08009925, 08010219, 09008424, 09008857, 06014286, and 07010694 pertain to investigations that did not result in convictions or deferred adjudication. Based on your

representations and our review of the information at issue, we conclude that the department has demonstrated that section 552.108(a)(2) is applicable to these reports.

However, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). Therefore, with the exception of basic information, the department may generally withhold incident report numbers 08007671, 09008358, 09008364, 09011702, 07012155, and 07013837 under section 552.108(a)(1) of the Government Code and incident report numbers 08005757, 08005869, 08009925, 08010219, 09008424, 09008857, 06014286, and 07010694 under section 552.108(a)(2) of the Government Code.

We note, however, that the requestor has a potential right of access to the submitted information under federal law. Such a right of access, if applicable, would preempt the protection afforded by section 552.108 of the Government Code. *See* U.S. Const. art. VI, cl. 2 (Supremacy Clause); *Delta Airlines, Inc. v. Black*, 116 S.W.3d 745, 748 (Tex. 2003) (discussing federal preemption of state law). In this instance, the requestor is a representative of Advocacy, Inc. (“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, and the Protection and Advocacy of Individual Rights Act, 29 U.S.C. § 794(e). *See* Tex. Gov. Exec. Order No. DB-33, 2 Tex. Reg. 3713 (1977); Attorney General Opinion JC-0461 (2002); *see also* 42 CFR §§ 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).

The PAIMI Act provides, in relevant part, that a P&A system “shall . . . have access to all records of . . . any individual who is a client of the system if such individual . . . has authorized the system to have such access[.]” 42 U.S.C. § 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 [to the individual] 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 [P&A system] makes a written request for the records involved[.]

42 U.S.C § 15043(a)(2)(B), (I)(I), (J)(I). The DDA Act states that 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; and

(3) a discharge planning record.

*Id.* § 15043(c). 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 submitted information constitutes a "record" under either of those acts. In this instance, the submitted information consists of criminal law enforcement records that are being utilized for law enforcement purposes. We note that the submitted information is not among the

information specifically listed as “records” in sections 10806(b)(3)(A) and 15043(c).<sup>1</sup> By these statutes’ plain language, access is limited to “records.” See *In re M&S Grading, Inc.*, 457 F.3d 898, 901 (8<sup>th</sup> Cir. 2000) (analysis of a statute must begin with the 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 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 the PAIMI Act and the DDA Act. See *Kofa v. INS*, 60 F.3d 1084 (4<sup>th</sup> 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 the above analysis, we believe that 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 (3<sup>rd</sup> 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, the submitted information is not among the information specifically listed as “records” in sections 10806(b)(3)(A) and 15043(c). Furthermore, we find the submitted information is 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 the submitted information under either the PAIMI Act or the DDA Act.

In summary, with the exception of basic information, the department may withhold incident report numbers 08007671, 09008358, 09008364, 09011702, 07012155, and 07013837 under section 552.108(a)(1) of the Government Code and incident report numbers 08005757, 08005869, 08009925, 08010219, 09008424, 09008857, 06014286, and 07010694 under

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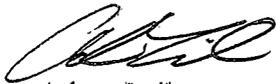
<sup>1</sup>Use of the term “includes” in sections 10806(b)(3)(A) and 15043(c) of title 42 of the United States Code indicates that the definitions of “records” are not limited to the information specifically listed in those sections. See *St. Paul Mercury Ins. Co. v. Lexington Ins. Co.*, 78 F.3d 202 (5<sup>th</sup> Cir. 1996); see also 42 C.F.R. § 51.41.

section 552.108(a)(2) of the Government Code.<sup>2</sup> Incident report number 06003891 must be released to the requestor.

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](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 372416

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that some of the information being released contains confidential information to which the requestor, as the named individual's authorized representative, has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). However, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.