



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2010

Ms. Nneka C. Egbuniwe  
Deputy General Counsel  
Parkland Health and Hospital System  
5201 Harry Hines Boulevard  
Dallas, Texas 75235

OR2010-09353

Dear Ms. Egbuniwe:

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# 384213.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for: 1) the entire clinical or medical record of a named deceased individual; 2) the entire jail record of the individual; 3) all investigative reports and supporting documentation pertaining to the individual's death; 4) district policies and procedures pertaining to inmate care and treatment; 5) any peer review committee documents pertaining to the individual's death; 6) information pertaining to district staff or employees who responded to the service call regarding the individual; 7) information relating to the training of staff or employees; 8) time logs of district staff or employees during the individual's incarceration; 9) documents evidencing agreements between the district and the Dallas County Sheriff's Office (the "sheriff") or Dallas County (the "county") for the provision or delivery of psychiatric, psychological, or mental health services to county inmates; and 10) documents evidencing agreements between the district and sheriff or the county for the provision or delivery of medical, clinical, or other health-related service to county inmates. You state the district will release information responsive to items 1, 4, 6,

7, and 8.<sup>1</sup> You state the district does not have information responsive to items 2, 9, and 10.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup> We have also received comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note the information at issue in this ruling consists of documents responsive to items 3 and 5 of the request, which pertain to information regarding the death of a named individual. We also note portions of the submitted information do not pertain to the deceased individual named in these categories of requested information. Further, in comments to our office, the requestor states she "does not seek information relating to any other person/inmate/patient other than [the named individual]." Thus, this information, which you have marked, is not responsive to this request. This decision does not address the public availability of the information that is not responsive to this request, and the district need not release that information in response to this request.<sup>4</sup>

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. This exception encompasses information protected by other statutes, such as section 160.007 of the Occupations Code. Section 160.007 provides in part:

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<sup>1</sup>Advocacy states the district has withheld all requested documents. Whether the district actually provided any information responsive to items 1, 4, 6, 7, and 8 to Advocacy is a question of fact and this office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. See Open Records Decision No. 522 at 4 (1990). Thus, we assume the district released information responsive to items 1, 4, 6, 7, and 8. If not, the district must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

<sup>2</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

<sup>3</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>4</sup>As our ruling is dispositive of this information, we need not address your arguments against its disclosure.

(a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

Occ. Code § 160.007(a). “Medical peer review” is defined by the Medical Practice Act, subtitle B of title 3 of the Occupations Code, to mean “the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners.” *Id.* § 151.002(a)(7). A medical peer review committee is “a committee of a health care entity . . . or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services[.]” *Id.* § 151.002(a)(8).

Section 161.032 of the Health and Safety Code 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 the board provides authority to the district's medical advisory council to maintain, through the medical staff bylaws, "a complete procedure for making recommendations . . . concerning staff appointments and reappointments, as well as granting, reduction, suspension, and revocation of clinical privileges based on the individual's qualifications, experience, and current professional competence." You further state the documents in Exhibit B were obtained by district staff solely in support of and to verify information provided on physicians' applications for appointment or reappointment to the district's medical staff. You state these documents were used by the district's credentials committee, medical advisory council, and the board in evaluating the qualifications of professional health care practitioners. You further state the information obtained in these documents was utilized in carrying out the deliberative, peer review, and medical committee activities of these committees. Based on your representations and our review, we agree Exhibit B consists of confidential records of a medical peer review committee under section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code.

Additionally, you assert the responsive information in Exhibit C is confidential pursuant to section 161.032(c) of the Health and Safety Code. You inform us that the district's Board of Managers established the Mortality and Morbidity Review Committee (the "M&M Committee") to review all deaths in custody, identify any risk factors, and develop action plans to manage future risk. Based on your representations, we conclude that the M&M Committee is a medical committee for purposes of section 161.032 of the Health and Safety Code. You state the responsive information in Exhibit C was "collected on behalf of, presented to, and reviewed by the M&M Committee in carrying out its duties[.]" You also state the documents at issue "include both factual medical information and mental impressions of physicians and other health care professionals involved in the care of the subject patient." You state this information is not prepared in the regular course of the district's business; rather, it is a tool "used in carrying out distinct, purposeful quality improvement activities of [the M&M Committee.]" Based on your representations and our review, we conclude that the information at issue constitutes records, information, or reports of a medical committee acting under subchapter D of chapter 161 of the Health and Safety

Code. We therefore conclude that the responsive information in Exhibit C is confidential under section 161.032(c) of the Health and Safety Code.<sup>5</sup>

We must now address the requestor's argument that, as a representative of Advocacy, 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. *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).

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, PAIMI provides Advocacy 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 system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the 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;

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<sup>5</sup>As our ruling is dispositive of this information, we need not address your remaining arguments against its disclosure.

(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 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)(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 . . . 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, 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).

The requestor states the deceased individual suffered from mental illness and that Advocacy received information that this individual died while she was an inmate incarcerated in the county. 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 asserts the individual at issue does not have a legal guardian, conservator, or other legal representative acting on her behalf with regard to the investigation of possible abuse

and neglect and her death. Additionally, Advocacy states it has probable cause to believe the individual's death 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 Protection and Advocacy Services, Inc. v. Rasmussen*, 206 F.R.D. 630, 639 (S.D. Iowa 2001); *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); *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 Advocacy access to "records" and to the extent state law provides for the confidentiality of "records" requested by Advocacy, 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 individuals 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.<sup>6</sup> 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,

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<sup>6</sup>Use 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. Houston*, 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[.]”).

As previously discussed, Exhibit B pertains to credentials of district physicians. We have no indication Exhibit B pertains to an individual diagnosed with mental illness. Accordingly, we find Advocacy does not have a right of access to Exhibit B under PAIMI. We therefore conclude the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code.<sup>7</sup>

However, the responsive information in Exhibit C pertains to an individual diagnosed with a mental illness and consists of information prepared by district staff that describes an incident of possible abuse, neglect, or injury. Thus, in this instance, even though the district claims confidentiality under section 161.032 of the Health and Safety Code for this information, this claim is preempted by PAIMI. Accordingly, based on Advocacy’s representations, we determine Advocacy has a right of access to the responsive information in Exhibit C pursuant to subsection (a)(1)(A) of section 10805 of title 42 the United States Code. We further note the district’s claims under section 552.107, 552.111, and 552.117 of the Government Code, all of which are state law provisions, are similarly preempted by PAIMI. Thus, the district must release the responsive information in Exhibit C to the requestor.

In summary, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code. The remaining responsive information must be released to this requestor.<sup>8</sup>

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

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<sup>7</sup>As our ruling is dispositive of this information, we need not address your remaining arguments against disclosure.

<sup>8</sup>Because Advocacy has a federal statutory right of access to some of the information being released in this instance, the district must again seek a decision from this office if it receives a request for this same information from a different requestor.

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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/tp

Ref: ID# 384213

Enc. Submitted documents

c: Requestor  
(w/o enclosures)