



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 25, 2017

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P. O. Box 4087  
Austin, Texas 78773-0001

OR2017-11465

Dear Ms. Cost:

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# 659971 (PIR # 17-1814).

The Texas Department of Public Safety (the "department") received a request for information pertaining to the psychological evaluation of the requestor. You claim 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses chapter 611 of the Health and Safety Code. Section 611.002 provides in pertinent part:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the

patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). The section defines a “patient” as “a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.” *See id.* § 611.001(1). Upon review, we find the information we have marked consists of mental health records for purposes of chapter 611 of the Health and Safety Code. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 611 of the Health and Safety Code.<sup>1</sup> However, we find the remaining information does not consist of mental health records for purposes of chapter 611, and it may not be withheld under section 552.101 of the Government Code on that basis.

You also raise section 1701.306 of the Occupations Code for the submitted information. Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which makes confidential the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement (“TCOLE”). Section 1701.306 provides:

(a) [TCOLE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). You seek to withhold the remaining information under section 1701.306(b). Upon review of the remaining information, however, we find the information does not consist of L-2 Declaration of Medical Condition or L-3 Declaration

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<sup>1</sup>We note this ruling does not affect a patient’s right to access his or her mental health records from the professional who provided treatment under chapter 611 of the Health and Safety Code. *See* Health & Safety Code §§ 611.004, .0045; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (Medical Practice Act, subtitle B of title 3 of the Occupations Code, does not provide patient general right of access to his or her medical records from governmental body responding to request for information under the Public Information Act). As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.


of Psychological and Emotional Health forms. Accordingly, section 1701.306 of the Occupations Code is not applicable to the remaining information, and the department may not withhold the remaining information under section 552.101 on that basis.

To summarize, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 611 of the Health and Safety Code. The remaining submitted information must be released to the requestor.<sup>2</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 responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

  
Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/eb

Ref: ID# 659971

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the information being released in this instance includes information that is confidential with respect to the general public, but to which the requestor has a right of access. See Gov't Code § 552.023(a), Open Records Decision No. 481 at 4 (1987). Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.