



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 23, 2017

Ms. Jessica Marsh  
General Counsel  
Texas Civil Commitment Office  
4616 West Howard Lane, Building 2, Suite 350  
Austin, Texas 78728

OR2017-19219

Dear Ms. Marsh:

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# 674347 (ORR# 2017-0018).

The Texas Civil Commitment Office (the "TCCO") received a request for information pertaining to the denial of a named individual's requests to change his residence and to have contact with a second named individual. The TCCO claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.130, and 552.137 of the Government Code. We have considered the exceptions the TCCO claims and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information includes completed reports that are subject to section 552.022(a)(1). The TCCO must release the completed reports pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* The TCCO seeks to withhold the information subject to section 552.022(a)(1) under sections 552.103 and 552.111 of the Government Code. However, sections 552.103 and 552.111 are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore, the TCCO may not withhold the information subject to section 552.022, which we have marked, under section 552.103 or section 552.111 of the Government Code. However, as section 552.101 of the Government Code applies to confidential information, we will consider the applicability of section 552.101 for the information we have marked.

Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

The TCCO states, and provides documentation showing, prior to its receipt of the instant request, a lawsuit styled *Richards v. Office of Violent Sex Offender Management*, Cause No. 4:13-CV-01394, was filed and is currently pending against former employees of the TCCO in their official capacities in the United States District Court for the Southern District of Texas. Therefore, we agree litigation was pending on the date the TCCO received the present request for information. The TCCO also states the information at issue is related to the substance of the lawsuit claims. Based on the TCCO's representations and our review, we find the information at issue is related to the pending litigation. Therefore, we conclude the TCCO may withhold the information not subject to section 552.022(a)(1) of the Government Code under section 552.103 of the Government Code.<sup>1</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

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 encompasses information made confidential by other statutes, such as chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and 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); *see id.* § 611.001 (defining "patient" and "professional"). 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). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .0045; *see also* Open Records Decision No. 565 (1990). Upon review, we find the information we marked subject to section 552.022 of the Government Code consists of

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<sup>1</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.


mental health records that are subject to chapter 611 of the Health and Safety Code. Accordingly, the TCCO must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

In summary, the TCCO may withhold the information not subject to section 552.022(a)(1) of the Government Code under section 552.103 of the Government Code. The TCCO must withhold the information subject to section 552.022(a)(1) of the Government Code, which we marked, under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bw

Ref: ID# 674347

Enc. Submitted documents

c: Requestor  
(w/o enclosures)