



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 12, 2020

Ms. Courtney Ebeier
Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2020-07912A

Dear Ms. Ebeier:

Our office issued Open Records Letter No. 2020-07912 (2020) to Texas Health and Human Services Commission (the “commission”) on March 12, 2020. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on March 12, 2020. *See generally* Gov’t Code § 552.011 (providing that this office may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the “Act”), chapter 552 of the Government Code). This ruling was assigned ID# 816179 (HHSC Ref. Nos. 20741 and 20793).

The commission received two requests from different requestors for information pertaining to a named individual. 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 representative sample of information.¹

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 section 507.205 of the Occupations Code, which provides the following:

- (a) Except as provided by Subsection (b), a complaint and investigation and all information and materials compiled by the [Texas Behavioral Health

¹We assume 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.

Executive Council (the “executive council”)]² in connection with the complaint and investigation are not subject to:

(1) disclosure under Chapter 552, Government Code[.]

...

(b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the executive council in connection with the complaint may be disclosed to:

(1) the executive council and executive council employees or agents involved in license holder discipline;

(2) a party to a disciplinary action against the license holder or that party’s designated representative;

(3) the board for the applicable profession;

(4) a law enforcement agency;

(5) a governmental agency, if:

(A) the disclosure is required or permitted by law; and

(B) the agency obtaining the disclosure protects the identity of any patient whose records are examined; or

(6) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

Occ. Code § 507.205(a)(1), (b). You state the submitted information was compiled by the executive council in connection with a complaint and investigation of a named licensed professional counselor. We have no indication either requestor is an individual or a representative of an entity listed in section 507.205(b). Upon review, we find the information at issue is confidential under section 507.205(a). Therefore, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 507.205(a) of the Occupations 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.

²HB 1501 of the 86th Legislature created the executive council and consolidated the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, the Texas State Board of Examiners of Psychologists, and the Texas State Board of Social Worker Examiners under the executive council. See Act of May 25, 2019, 86th Leg., R.S., H.B. 1501.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/eb

Ref: ID# 816179

Enc. Submitted documents

c: Requestor
(w/o enclosures)