



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2022

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

OR2022-09748

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# 937051 (TCCO ID# PIA 2022-0001).

The Texas Civil Commitment Office (the "TCCO") received a request for five categories of information pertaining to the requestor. The TCCO states it has released some information to the requestor. The TCCO claims the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions the TCCO claims 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).

Section 552.111 of the Government Code excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" *Id.* § 552.111. This exception encompasses the deliberative process privilege. *See Open Records Decision No. 615 at 2 (1993)*. The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); *Open Records Decision No. 538 at 1-2 (1990)*.

In *Open Records Decision No. 615*, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*,

842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

The TCCO states the information it marked and indicated consists of advice, opinions, and recommendations of employees of the TCCO regarding policymaking matters. Upon review, however, we find the information at issue is general administrative and purely factual that does not rise to the level of policymaking. Thus, the TCCO has failed to demonstrate the information at issue reveals advice, opinions, or recommendations that pertain to policymaking matters of the TCCO. Therefore, the TCCO may not withhold any portion of the information at issue under section 552.111 of the Government Code on the basis of the deliberative process privilege.

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 841.0833 of the Health and Safety Code, which reads as follows:

- (a) The [TCCO] shall develop procedures for the security and monitoring of committed persons in each programming tier.
- (b) Information regarding the security and monitoring procedures developed under Subsection (a) is confidential and not subject to disclosure under [the Act].

Health & Safety Code § 841.0833. The TCCO states the information it indicated consists of information regarding procedures for the security and monitoring of a committed person. Upon review, we agree the information at issue consists of information related to the security and monitoring of a committed person, which is made confidential under section 841.0833(b). Accordingly, the TCCO must withhold the information it indicated under

section 552.101 of the Government Code in conjunction with section 841.0833(b) of the Health and Safety Code.

The TCCO asserts the information it indicated is confidential under former section 1703.306 of the Occupations Code, which provided for the confidentiality of certain polygraph information. However, the 87th Legislature repealed former chapter 1703 of the Occupations Code effective September 1, 2021. Act of May 31, 2021, 87th Leg., R.S., HB 1560, § 2.01(1). Accordingly, the TCCO may not withhold the information at issue under section 552.101 of the Government Code in conjunction with former section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses information made confidential by 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 some of the remaining information consists of mental health records that are subject to chapter 611 of the Health and Safety Code. Accordingly, the TCCO must withhold the mental health records it marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.¹

In summary, the TCCO must withhold the information it indicated under section 552.101 of the Government Code in conjunction with section 841.0833(b) of the Health and Safety Code. The TCCO must withhold the mental health records it marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The TCCO must release the remaining information to this requestor.²

¹ We note this ruling does not affect an individual’s right of access to his or her own 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 a request for information under the Act).

² We note the requestor has a right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or

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 <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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jm

Ref: ID# 937051

Enc. Submitted documents

c: Requestor
(w/o enclosures)

person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the TCCO receives another request for the same information from a different requestor, the TCCO must again seek a decision from this office.