



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2022

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

OR2022-22167

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# 960671 (TCCO ID PIA 2022-0017).

The Texas Civil Commitment Office (the "TCCO") received a request for several categories of information pertaining to a specified incident and individual. You indicate the TCCO does not have information responsive to a portion of the request.¹ You also inform us the TCCO has released some information. You claim some of 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 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].

¹ 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), 452 at 3 (1986), 362 at 2 (1983).

Health & Safety Code § 841.0833. You state some of the submitted information, which you marked, 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 you marked under section 552.101 of the Government Code in conjunction with section 841.0833(b) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides in relevant part the following:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). Upon review, we find the information we marked constitutes medical records. Accordingly, the TCCO must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information constitutes confidential medical records for the purposes of the MPA; thus, the TCCO may not withhold any of the remaining information on this basis.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the

Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the TCCO may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the TCCO must withhold the information you marked 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 information we marked under section 552.101 of the Government Code in conjunction with the MPA. The TCCO must release the remaining information.

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/jxd

Ref: ID# 960671

Enc. Submitted documents

c: Requestor
(w/o enclosures)