



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2022

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

OR2022-32215

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# 972965 (TCCO PIA 2022-0026).

The Texas Civil Commitment Office (the "TCCO") received a request for sixteen categories of information pertaining to the requestor.<sup>1</sup> The TCCO states it has released some information to the requestor. The TCCO claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the TCCO claims and reviewed the submitted information, some of which consists of representative samples.<sup>2</sup>

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,

---

<sup>1</sup> The TCCO states, and provides documentation showing, it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> We assume that 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.

(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 submitted information consists of mental health records that are subject to chapter 611 of the Health and Safety Code. Accordingly, the TCCO must withhold the information responsive to Categories 1, 3, and 14 under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses section 841.0833 of the Health and Safety Code, which reads as follows:

(a) The [commitment office] 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 some of the remaining information consists of information regarding procedures for the security and monitoring of a committed person. Upon review, we agree the information we have marked 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 responsive to Categories 12 and 13 and the information we have marked under section 552.101 of the Government Code in conjunction with section 841.0833(b) of the Health and Safety Code.<sup>4</sup> However, we find the TCCO has failed to establish any of the remaining information at issue consists of information regarding procedures for the security or monitoring of committed persons for purposes of section 841.0833. Therefore, the TCCO has not demonstrated the remaining information at issue is confidential under section 841.0833, and the TCCO may not withhold it under section 552.101 on that ground.

---

<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>4</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.101 of the Government Code also 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. Further, in Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the TCCO must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the TCCO must withhold the information responsive to Categories 1, 3, and 14 under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The TCCO must withhold the information responsive to Categories 12 and 13 and the information we have 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 have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/eb

Ref: ID# 972965

Enc. Submitted documents

c: Requestor  
(w/o enclosures)