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ATTORNEY GENERAL OF TEXAS

November 7, 2022

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

OR2022-34588

Dear Mr. Walsh:

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# 983417 (Reference No. 2022-0033).

The Texas Civil Commitment Office (the "TCCO") received three requests from the same requestor for certain information pertaining to the requestor, including certain TCCO policies and training materials. The TCCO claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the TCCO redacted portions of the submitted information, which the TCCO indicates is not responsive to the present requests for information because it contains information beyond the requested information. This ruling does not address the public availability of the non-responsive information and the TCCO need not release it to the requestor.

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." *Id.* § 552.101. This section encompasses information made confidential by section 841.0833 of the Health and Safety Code, which provides the following:

(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 submitted responsive information consists of information regarding procedures for the security and monitoring of a committed person. Upon review, we find the information we marked consists of information related to the security and monitoring of a committed person, which is made confidential under section 841.0833(b) of the Health and Safety Code. Accordingly, the TCCO must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 841.0833(b) of the Health and Safety Code.¹ However, we find the TCCO has failed to establish any of the remaining responsive information consists of procedures for the security or monitoring of committed persons for purposes of section 841.0833. Therefore, the TCCO has not demonstrated the remaining responsive information is confidential under section 841.0833 of the Health and Safety Code, and the TCCO may not withhold it under section 552.101 of the Government Code on that ground.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the TCCO must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.101 of the Government Code also encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm. *Id.* In applying this standard, the court noted "deference

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted responsive information.

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must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119. Upon review, we conclude the TCCO has failed to demonstrate the applicability of the common-law physical safety exception to any of the remaining responsive information. Therefore, the TCCO may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

In summary, the TCCO must withhold the information we 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 common-law privacy. The TCCO must release the remaining responsive information to this requestor.³

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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/pt

Ref: ID# 983417

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or 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 this same information from a different requestor, the TCCO must again seek a ruling from this office.