

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-21-003293  
Ruben Tamez

CAUSE NO. D-1-GN-21-003293

LATINOJUSTICE PRLDEF,	§	IN THE DISTRICT COURT OF
	§	
Petitioner,	§	
	§	
vs.	§	
	§	TRAVIS COUNTY, TEXAS
THE TEXAS DEPARTMENT OF CRIMINAL	§	
JUSTICE,	§	
	§	
Respondent.	§	
	§	<u>126TH</u> JUDICIAL DISTRICT

**ORIGINAL PETITION FOR MANDAMUS  
UNDER THE PUBLIC INFORMATION ACT**

Petitioner LatinoJustice PRLDEF (“LatinoJustice”) files this original petition and states as follows:

1. This petition seeks a writ of mandamus to compel the Texas Department of Criminal Justice (“TDCJ”) to produce documents it has been withholding in violation of the Texas Public Information Act (“PIA”). Pursuant to Tex. R. Civ. P. 190.1, discovery is expected to take place under Level 2; this case is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because the relief sought includes non-monetary injunctive relief

**STATEMENT OF THE CASE**

2. LatinoJustice has been investigating certain practices, policies, and procedures of the TDCJ Rehabilitation Program Division (“RPD”) for over a year. Specifically, LatinoJustice is investigating concerns and issues regarding programs provided by the RPD which certain individuals are required to complete as a condition of parole while still incarcerated in a TDCJ unit. (“Pre-Release Programs”). During the time frame of the investigation, TDCJ policies, including suspension of transfers to units where Pre-Release Programs are provided, caused significant delays in accessing these programs, and the content of RPD programming changed dramatically.

3. The delays in accessing Pre-Release Programming have been widely reported, both in the press and in a recent report by the Lyndon B. Johnson School of Public Affairs at the University of Texas. That report concluded that between March 2020 and March 2021, forty-two people died in TDCJ custody after being granted parole and while waiting for their program to begin.<sup>1</sup>
4. LatinoJustice, along with Grassroots Leadership, investigated the content of the Pre-Release Programming provided to those who were eventually able to access it. Despite petitioner's inability to obtain critical information regarding this programming, hundreds of survey responses and dozens of interviews, along with admissions from TDCJ officials and even a state legislator, reveal that TDCJ's programming has been severely compromised and now consists mainly of mechanical rote paperwork that cannot and does not provide those taking it with any meaningful benefit.
5. Even more troubling, LatinoJustice has been informed by individuals that they were required by TDCJ officials to falsely report more hours of programming on the timesheets they submitted than they in fact received. Three of these individuals have provided declarations in support of this assertion which are executed pursuant to Title 6, Section 132.001(d) of the Texas Civil Practice and Remedies Code. The declaration of Michael Magoto is attached hereto as **Exhibit 1**. The declaration of Jerred Denton is attached hereto as **Exhibit 2**. The declaration of Joshua Ladd is attached hereto as **Exhibit 3**.
6. As part of its investigation, LatinoJustice has submitted multiple public information requests to the TDCJ seeking information on the Pre-Release Programming provided, the scheduling of the

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<sup>1</sup> Deitch, Michelle, et al. *Dead Man Waiting: A brief profile of deaths in Texas prisons among people approved for parole release*. June 2021, University of Texas at Austin Lyndon B. Johnson School of Public Affairs, available at <https://repositories.lib.utexas.edu/bitstream/handle/2152/86496/Dead%20Man%20Waiting---FINAL.pdf>.

direct programs, the means utilized by the TDCJ to evaluate the Pre-Release Programming, and the timesheets used by program participants to record their hours.

7. These requests sought documents that constitute “public information” under Tex. Gov. Code. § 552.321(a). Examples of the documents requested include: curricula for the programs, metrics evaluating the programs’ effectiveness, blank versions of the timesheets that those taking the programs are required to fill out, schedules for counselors who supposedly conducted the programs, and communications with outside vendors that provide programming.
8. As set forth below, TDCJ has failed to provide responsive documents, sought opinions from the Office of the Attorney General (“OAG”) based on exemptions that do not apply, and engaged in unreasonable delays in responding.
9. Because of TDCJ’s refusal to provide public information, LatinoJustice is compelled to file this petition seeking a writ of mandamus ordering TDCJ to provide the requested documents.

### **PARTIES**

10. Petitioner LatinoJustice is a non-profit corporation organized under the laws of New York with its headquarters in New York and a satellite office in Texas. LatinoJustice champions an equitable society by using the power of the law together with advocacy and education. Since its founding as the Puerto Rican Legal Defense and Education Fund, LatinoJustice has advocated for and defended the constitutional rights and the equal protection of all Latinos under the law. LatinoJustice, by and through its employees and agents, is also the public information requestor.
11. Respondent The Texas Department of Criminal Justice (“TDCJ”) is a state agency that operates the prison system. TDCJ is required by law and rule to provide Pre-Release programming to those who have been granted parole on the condition that they complete such programming. TDCJ may be served with civil process through its executive director, Bryan Collier and/or at its offices in Travis County at 209 W 14th St, Austin, TX 78701.

## **JURISDICTION AND VENUE**

12. This Court has jurisdiction pursuant to Section 552.321 of the PIA, which provides that if a government body fails to produce “public information” the requestor may file suit in a district court for a writ of mandamus to compel the governmental body to produce the information.
13. Venue is proper in Travis County, Texas under § 553.321(b) of the PIA, as one of TDCJ’s main offices is in Travis County.

## **FACTS REGARDING TDCJ’S PRE-RELEASE PROGRAMS**

### **More than Half of those Granted Parole are Required to take Pre-Release Programming.**

14. Texas law permits some people who have been convicted of criminal offenses to serve a portion of their term outside of prison on parole after they have been individually evaluated and a panel of the Board of Pardons and Paroles (the “Board”) has determined that they pose a low risk to the community. Tex. Gov. Code § 508.001(6).
15. Whether or not an individual is approved for parole is determined by a panel of the Board, an independent board made up of appointees of the governor with the advice and consent of the senate. Tex. Gov. Code § 508.031 and § 508.0441.
16. When a person is eligible for parole, a panel of the Board may vote to grant parole to that individual. Tex. Gov. Code § 508.141(a)(3).
17. A panel of the Board may only vote to grant parole to an individual when its members believe that the individual is able and willing to fulfill the obligations of a law-abiding citizen. Tex. Gov. Code § 508.141(e)(2).
18. A panel of the Board may only vote to grant parole to an individual when the panel determines that the individual’s release will not increase the likelihood of harm to the public. Tex. Gov. Code § 508.141(d).

19. When it votes to approve an individual for parole, the Board issues an “FI” status, short for “Further Investigation,” from FI-1 through FI-18R. 37 Tex. Admin. Code § 145.12(4). As noted above, when voting to approve someone for parole, the Board may require that the person take a Pre-Release Program provided by RPD while the person is still incarcerated in a TDCJ unit.
20. Aside from FI-1 (release when eligible), FI-2 (release on a specified future date), and CU/FI (which applies only to individuals serving consecutive sentences) each of the FI statuses requires that the individual be transferred to a Pre-Release Program. 37 Tex. Admin. Code § 145.12(4).
21. Most individuals approved for parole must complete a Pre-Release Program before being released on parole. For example, according to the Board’s most recent annual statistical report, of the 27,855 total approval votes from September 1, 2018 through August 31, 2019, 16,737, or over 60%, included a requirement that the parolee take a Pre-Release Program prior to being released.<sup>2</sup>

### **TDCJ Is Required to Provide Meaningful Pre-Release Programming**

22. Once a person has received an FI vote that requires completion of a Pre-Release Program, that person “shall be placed in a treatment program consistent with that vote.” 37 Tex. Admin. Code § 145.12(6).
23. The standards for all programs administered by the Rehabilitation and Programs Division, including the Pre-Release Programs, are governed by statute and regulation.
24. State law requires TDCJ to create a Comprehensive Re-entry and Reintegration Plan, and to evaluate that plan no less frequently than every three years. Tex. Gov. Code § 501.092.
25. State law requires that programs provided through the Comprehensive Re-entry and Reintegration Plan meet certain standards: for example, they must address the assessed needs of

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<sup>2</sup> See Texas Board of Pardons and Paroles, Annual Statistical Report, Fiscal Year 2019, *available at* [https://www.tdcj.texas.gov/bpp/publications/FY\\_2019\\_Annual\\_Statistical\\_Report.pdf](https://www.tdcj.texas.gov/bpp/publications/FY_2019_Annual_Statistical_Report.pdf).

offenders, be implemented by highly skilled staff, and provide individualized case management.

Tex. Gov. Code § 501.092(b)(2), (g)(1), and (g)(2)(A).

26. TDCJ spends tens of millions of dollars on programs. For example, for the FY 2022–23 budget, TDCJ is requesting over \$66 million just for one set of programs, the In-Prison Therapeutic Community (IPTC) programs.<sup>3</sup>

### **When COVID-19 Struck, TDCJ First Halted, Then Severely Compromised Pre-Release Programming**

27. When COVID-19 first spread within TDCJ, TDCJ implemented policies (such as a halt on transfers) that caused delays in accessing programming. These delays were widely reported.<sup>4</sup>
28. As a result of these delays, the number of programs conducted by TDCJ was reduced significantly. While in Fiscal Year 2019, 57,750 people accessed re-entry programs, in Fiscal Year 2020, only 39,322 were able to do so, a drop of over 30%.<sup>5</sup>
29. At some point in 2020, TDCJ started providing individuals who were ordered to complete Pre-Release Programs to instead fill out workbook pages (the “Workbook Policy”). This policy was described by the head of TDCJ’s RPD, Christopher Carter, as one where individuals received “packets of lessons prepared by licensed professionals.”<sup>6</sup> In fact the workbook assignments were

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<sup>3</sup> See TDCJ Legislative Appropriations Request for Fiscal Years 2022-23, page 129, available at [https://www.tdcj.texas.gov/documents/bfd/FY\\_2022-23\\_LAR.pdf](https://www.tdcj.texas.gov/documents/bfd/FY_2022-23_LAR.pdf).

<sup>4</sup> See, e.g., Lauren McGaughy, *Ten Thousand Texas Prisoners Approved for Parole Sit Behind Bars Amid Coronavirus Pandemic*, Dallas Morning News, May 28, 2020, available at <https://www.dallasnews.com/news/investigations/2020/05/28/ten-thousand-texas-prisoners-approved-for-parole-sit-behind-bars-amid-coronavirus-pandemic/>

<sup>5</sup> See Texas Government Code Chapter 501.013 Reentry and Parole Referral Report, 2020 available at [https://www.tdcj.texas.gov/documents/rid/RID\\_501.103\\_Parole\\_and\\_Reentry\\_Fiscal\\_Year20\\_Report.pdf](https://www.tdcj.texas.gov/documents/rid/RID_501.103_Parole_and_Reentry_Fiscal_Year20_Report.pdf) and Reentry and Parole Referral Report for Fiscal year 2019 (HB 2719, 83<sup>rd</sup> Legislature), available at [https://www.tdcj.texas.gov/documents/rid/FY19\\_Reentry\\_and\\_Parole\\_Referral\\_Report.pdf](https://www.tdcj.texas.gov/documents/rid/FY19_Reentry_and_Parole_Referral_Report.pdf).

<sup>6</sup> Notes of August 5, 2020 conference call between TDCJ and Texas Inmate Families Association, available at <https://tifa.org/covid19/>.

not individually tailored to a person's needs, and the assignments that were turned in were not reviewed by TDCJ personnel, or anyone.

30. The existence of the Workbook Policy was widely reported. Representative James White, chairman of the Texas House Corrections Committee, acknowledged that individuals were “just sitting around working out of the workbook, they’re not even engaging with the counselor,” and stated “here’s my thought about that—that’s the program. You just do the program.”<sup>7</sup>
31. One of the Pre-Release Programs where the Workbook Policy was implemented was in the Pre-Release Therapeutic Community (“PRTC”) program in Hamilton Unit in late 2020, as described in the declaration of Jerred Denton. *See Exhibit 2.*
32. In the Hamilton Unit PRTC program, most of the programming consisted of being given workbook pages and returning them. The returned pages were not evaluated. Some program participants did not complete the workbooks. Other participants intentionally wrote outrageous answers, such as copying from the dictionary, to see if anyone would read them and respond. No one responded.
33. According to TDCJ, the source material for this program was *Living In Balance*, a publication of the Hazelden Betty Ford Foundation. Described as a highly customizable program in which “your clinicians can pinpoint what is right for each and every client you serve,” *Living In Balance* is conducted over 47 in-person therapeutic sessions, each of which can be customized to be “done in 60 or 70 minutes.”<sup>8</sup>

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<sup>7</sup> Jolie McCullough, “The Coronavirus is Keeping Texas Prisoners who’ve been Approved for Parole Behind Bars,” *Texas Tribune*, July 23, 2020 available at <https://www.texastribune.org/2020/04/14/coronavirus-alters-texas-prisoners-parole-programs-required-release/>

<sup>8</sup> Publisher’s material, *Living In Balance: Moving from a life of addiction to a life of recovery*, Hazelden Publishing, available at <https://www.hazelden.org/web/public/livinginbalance.page>

34. Hazelden has offered free directions and instructions on how the program is to be performed during the pandemic. These instructions are available as a free download to anyone and are attached hereto as **Exhibit 4**. Nowhere in Hazelden’s instructions does it suggest that the program can be conducted without a clinician. Nowhere does Hazelden suggest that the workbook pages – described as “homework assigned between sessions” can be assigned without any clinical component and still constitute any sort of therapy.<sup>9</sup>

#### **FACTS REGARDING LATINOJUSTICE’S PUBLIC INFORMATION REQUESTS**

35. For the past year, LatinoJustice has been investigating the delays in accessing Pre-Release Programs and the content of those programs that individuals can access. As part of this investigation, it received hundreds of survey responses and conducted dozens of interviews with individuals who took or are currently taking programming. As part of this investigation, LatinoJustice submitted a number of public information requests to TDCJ.

36. As detailed below, TDCJ failed to provide the public information requested by LatinoJustice, hampering the public’s ability to learn about the content of RPD’s programming, the qualifications of those providing it, and the methods used to evaluate these programs.

37. Notably, in violation of the PIA, TDCJ has denied LatinoJustice’s efforts to determine why individuals participating in programming were asked to fill out timesheets falsely indicating the number of hours that they participated in the purported “direct programming.”

#### **Request One: January 20, 2021**

38. On January 20, 2021, LatinoJustice submitted a public information request seeking certain materials regarding programming, including lesson plans, rubrics for evaluating participant responses, qualifications of instructors, contracts with third-party vendors, and policies that

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<sup>9</sup> See **Exhibit 4** at 6.



allow for disabled individuals and those whose primary language is not English to participate. A true and accurate copy of the request (“Request One”) is attached hereto as **Exhibit 5**.

39. On February 2, 2021, TDCJ requested further information about the request, and LatinoJustice sent a revised request, attached hereto as **Exhibit 6**.

40. On March 3, 2021, TDCJ requested an opinion from OAG, and on March 11, LatinoJustice sent a response to OAG. This briefing is attached as **Exhibit 7** and **Exhibit 8**.

41. On May 17, 2021, OAG issued an opinion letter stating that sample documents that TDCJ had sent along with its letter were confidential because they were “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient.” The letter emphasized that OAG’s opinion was based on the “representative sample” of documents submitted by TDCJ and that the 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.” A copy of OAG’s opinion is attached hereto as **Exhibit 9**.

42. Relying on OAG’s opinion, TDCJ did not provide any documents in response to the request.

#### **Request Two: February 8, 2021**

43. On February 8, 2021, LatinoJustice revised a request sent on January 26 to request certain information about grievances, including “The total number of grievances filed by individuals complaining that programming required by their parole is not available and the units where these grievances were filed since May 22, 2020.” The request emphasized that “the information requested in request (3) is ‘statistical or other aggregated information’ and not subject to the restrictions of Section 552.134(a).” A true and accurate copy of this request (“Request Two”) is attached hereto as **Exhibit 10**.

44. On March 9, 2021, the TDCJ wrote to OAG seeking to withhold any response to the request because the information related to litigation and was “about an inmate,” Tex. Gov. Code §§ 552.103(a) and 552.134(a). The letter did not address the claim that the third request was for statistical information not exempted by Section 552.134(a). A true and accurate copy of the TDCJ’s letter is attached hereto as **Exhibit 11**.
45. On April 30, 2021, OAG ruled that the information could be withheld under Section 552.103(a). It did not address the claim that the information was statistical in nature. A true and accurate copy of the TDCJ’s letter is attached hereto as **Exhibit 12**.
46. Because the third request in the February 8 request was for statistical information pursuant to Tex. Gov. Code § 552.134(b), that information is “public information” pursuant to Section 552.321 and a writ of mandamus should issue ordering its release.

**Request Three: March 15, 2021 Curriculum and Metrics**

47. On March 15, 2021, in response to multiple verbal conversations with the Office of the General Counsel at the TDCJ, LatinoJustice submitted a records request that contained similar requests as the January 20, 2021 request, with the addition that it stated it did not seek any information about any particular individual. A true and accurate copy of this request (“Request Three”) is attached hereto as **Exhibit 13**.
48. On March 29, 2021, TDCJ stated that it would need additional time to respond, and that it anticipated that the information would be available on April 28. A true and accurate copy of that email is attached hereto as **Exhibit 14**.
49. On May 4, TDCJ provided a cost estimate of \$810 to produce the information. A true and accurate copy of that email is attached hereto as **Exhibit 15**. LatinoJustice paid the amount.
50. On June 2, 2021, TDCJ wrote that it would need an additional 30 days to respond, and that it anticipated that the information would be available on July 2, 2021. A true and accurate copy of

this email is attached hereto as **Exhibit 16**. TDCJ did not produce any documents on July 2, and did not request additional time.

**Request Four: March 15, 2021 Orders and Communications**

51. On March 15, 2021, LatinoJustice requested certain statistical reports that TDCJ is required by statute to produce, certain internal orders, and communications with vendors regarding programming. A true and accurate copy of this request (“Request Four”) is attached hereto as **Exhibit 17**.

52. On March 25, 2021, after a telephonic conversation with the Office of General Counsel at TDCJ, LatinoJustice withdrew the requests for statutorily-required reports and resubmitted them as a stand-alone request. On April 28, LatinoJustice acknowledged that TDCJ would seek an opinion from OAG regarding the remaining requests. A true and accurate copy of the communication is attached hereto as **Exhibit 18**.

53. On May 19, TDCJ sent a letter request to OAG, claiming that the requested material is exempted under the litigation exemption and the agency memoranda exemption. Tex. Gov. Code §§ 552.103 and 552.111. A true and accurate copy of this letter is attached hereto as **Exhibit 19**.

54. LatinoJustice submitted a response to this letter on June 25, 2021. A true and accurate copy of LatinoJustice’s response is attached hereto as **Exhibit 20**.

55. OAG has not yet ruled on TDCJ’s request.

**Request Five: April 28, 2021**

56. On April 1, 2021, LatinoJustice requested blank versions of certain forms, worksheets, and timesheets used at the Hamilton Unit during the Pre-Release Therapeutic Community program in late 2020 . A true and accurate copy of the request (“Request Five”) is attached hereto as **Exhibit 21**.

57. On April 15, 2021, TDCJ provided some materials in response to the first request, and identified the vendor and workbook used for the assignments in the third request. A true and accurate copy of TDCJ's response is attached hereto as **Exhibit 22**.
58. The TDCJ has not provided the requested blank timesheets. After a telephonic conference with TDCJ, LatinoJustice re-submitted the request for the blank timesheets on April 28, 2021. A true and accurate copy of the request is attached hereto as **Exhibit 23**.
59. LatinoJustice has received no response to the re-submitted request.

**Request Six: April 2, 2021**

60. On April 2, 2021, LatinoJustice requested information regarding posted schedules, actual schedules, and posted sample timesheets from the Hamilton Unit in late 2020. A true and accurate copy of this request ("Request Six") is attached hereto as **Exhibit 24**.
61. On May 6, TDCJ wrote that it would require an additional 30 days to process the request, and that it anticipated the information would be available on June 7, 2021.
62. On June 7, TDCJ wrote that it would require an additional 30 days to process the request, and that it anticipated the information would be available on July 7, 2021.
63. On June 16, TDCJ provided some information, including partially redacted schedules, but did not produce sample timesheets showing how they were to be filled out.

**ARGUMENT AND AUTHORITIES**

**I. No Requested Records are Exempt Under Section 552.101(Request One)**

64. Section 552.101 states in relevant part that information is excepted from disclosure "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision."
65. On May 17, 2021, OAG issued a letter stating that, based on its review of the sample documents provided by the TDCJ, the information requested in Request One was exempt from disclosure

because it constituted mental health records pursuant to Section 611.002 of the Tex. Health & Safety Code. (Ex. 9.)

66. The documents requested do not fall within the purview of Section 611.002. This provision only exempts “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.” Tex. Health & Safety Code § 611.002. Request One seeks documents pertaining to “the establishment, implementation, operation, enrollment, and certification of any program that the Texas Board of Pardons and Paroles has required any detained person to complete as a condition of release since January 1, 2016.” (Ex. 5.)
67. Neither the TDCJ nor OAG has set forth a reason to justify categorizing operational protocols, evaluation metrics, and course curricula as communications between patients and professionals.
68. To the extent that the TDCJ submitted communications between program participants and professionals to OAG in support of its request to withhold the documents, OAG’s opinion “does not authorize the withholding of” the originally requested material. (Ex. 9.)

## **II. No Requested Records are Exempt Under Section 552.134(a) (Requests One, Two and Four)**

69. In its March 3, 2021 letter to OAG, the TDCJ stated that the information requested in Request One was exempt from disclosure under Section 552.134(a). (Ex. 7.)
70. In its April 30, 2021 letter resolving Request Two, OAG ruled that the information requested was exempt from disclosure under Section 552.134(a). (Ex. 12.)
71. Section 552.134(a) states: “Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.”

72. The exception does not apply to these Requests. Request One seeks basic operational information, not information about any individual program participant. The third request in Request Two seeks statistical information and is therefore subject to production pursuant to Section 552.134(b).

73. The TDCJ additionally cited Section 552.134 in its letter to OAG on May 19 in support of withholding the documents requested in Request Four, but provided no support for its claim that the requested documents were subject to this exemption. (Ex. 19.)

### **III. No Requested Records are Exempt Under Section 552.103(a) (Request Two and Request Four)**

74. In its April 30, 2021 letter, OAG stated that the information requested in Request Two was exempt from disclosure under Section 552.103(a). (Ex. 12.) In its May 19, 2021 letter to OAG, TDCJ stated that the information Requested in Request Four was exempt from disclosure under Section 552.103(a). (Ex. 19.)

75. Section 552.103(a) exempts from disclosure information that is “information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.” *See* Tex. Gov’t Code § 552.103(a).

76. In order for information to be exempt from disclosure pursuant to section 552.103, two conditions must be satisfied: (1) there must be litigation involving the governmental body that is pending or reasonably anticipated and (2) the information must relate to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.)

77. In its April 30 letter, OAG cites to one case in support of its ruling, namely *Valentine v. Collier*, Docket Not. 4:20-cv-01115. (Ex. 12.) In its May 19 letter to OAG, TDCJ cites to *Valentine* and three additional cases in support of its argument. (Ex. 19.) These additional cases are (1) *Blakeley v. Baten ISF/Jordan Unit*, Docket No. 2:20-CV-00097 (N.D. Tex. April 17, 2020); (2) *Wolfford v. Baten ISF/Jordan Unit*, Docket No. 2-20-CV-00094 (N.D. Tex. April 16, 2020); and (3) *Lee v. Muniz*, Docket No. 9:20-CV-00075 (E.D. Tex. April 17, 2020). As set forth below, none of the cited cases are currently pending and therefore the exception simply does not apply.
78. In *Valentine*, the Defendants appealed the district court's permanent injunction against them. On April 19, 2021 United States Court of Appeals for the Fifth Circuit rendered judgment for the defendants. The case is therefore no longer pending. Docket No. 4:20-cv-01115, ECF No. 492.
79. *Blakeley v. Baten ISF/Jordan Unit*, Docket No. 2:20-CV-00097 (N.D. Tex. April 17, 2020) was terminated on July 6, 2021. Docket No. 2:20-CV-00097, ECF No. 14.
80. *Wolfford v. Baten ISF/Jordan Unit*, Docket No. 2-20-CV-00094 (N.D. Tex. April 16, 2020) was terminated on June 26, 2020. Docket No. 2-20-CV-00094, ECF No. 13.
81. *Lee v. Muniz*, Docket No. 9:20-CV-00075 (E.D. Tex. April 17, 2020) was terminated on June 12, 2020. Docket No. 9:20-CV-00075, ECF No. 10.
82. Because none of the cases cited by TDCJ are currently pending, the litigation exception does not apply.

#### **IV. No Requested Records are Exempt Pursuant to Section 552.111 (Request Four)**

83. In its May 19, 2021 letter to OAG, TDCJ argued that the requested documents were exempt from disclosure pursuant to Section 552.111. (Ex. 19.)
84. Section 552.111 exempts from disclosure any "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency . . . ." Courts have held that "[t]his exemption is intended to protect advice and opinions on policy matters and to

encourage frank and open discussion with the agency in connection with its decision-making processes.” *Texas Dept. of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex.App.—Austin 1992, no writ) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 393 (Tex.App.—San Antonio 1982, writ ref’d n.r.e.)).

85. The records requested in Request Four are not pre-decisional policy-making documents. Instead, they are records of policies already in existence and orders implementing those policies. In addition, other documents requested only concern implementation of said policies. These types of documents are exempt from the exception to disclosure by law. *See Lett v. Klein Independent School District*, 917 S.W.2d 455, 458 (Tex. App.—Houston [14th Dist.] 1996) (holding documents that “only implement existing policy” and “do not concern policy-making” are subject to disclosure). Accordingly, this exemption also does not apply.

**V. The TDCJ Has Failed to Produce Documents In a “Reasonable Time” as Required by Section 552.221 (Requests Three, Five, and Six)**

86. The PIA contains strict deadlines for responding to public information requests, including by responding of seeking an opinion from the OAG within ten business days. Sections 552.221(d), 552.301.

87. If an agency cannot meet these deadlines, it may seek an extension, but must still produce the documents “within a reasonable time, without delay.” Section 552.221(a).

88. There is no good faith exception to the statutory deadlines in the PIA. *See Tyler v. Paxton*, No. 03-12-00747-CV, 2015 WL 410281, at \*3 (Tex. App. Jan. 28, 2015).

89. While an agency may request more time to respond under the PIA, multiple month-long delays are not reasonable. As one court, citing to the TDCJ’s own policy manual, has written “[w]hat constitutes a reasonable amount of time depends on the facts in each case—some easily



obtained information may be produced the same day, while other information may take a couple of weeks.” *Felix v. Thaler*, 923 S.W.2d 650, 652 (Tex. App. 1995).

90. LatinoJustice submitted Request Three on March 15, 2021. (Ex. 13.) The TDCJ sought payment for the responsive documents, which LatinoJustice provided. Nevertheless, the TDCJ has granted itself multiple thirty-day extensions. In its most recent communication, the TDCJ stated it would provide responsive documents by July 2, a date which has come and gone. (Ex. 16.)
91. TDJC has therefore constructively denied Request Three by failing to respond in a “reasonable time.”
92. TDCJ has not provided certain documents requested in Request Five without providing an explanation or seeking an opinion from OAG.
93. TDCJ has not responded in any way whatsoever to Request Six.
94. TDCJ has failed to meet its statutory duty to respond within a reasonable time to Requests Three, Five, and Six, and therefore a writ ordering the release of the requested documents should issue.

#### **COUNT ONE: MANDAMUS**

LatinoJustice seeks an order compelling TDCJ to produce the requested public information as required by the Texas Public Information Act. Texas Gov’t Code § 552.321(a); *Kallinen v. City of Houston*, 462 S.W.3d 25 (Tex. 2015). LatinoJustice respectfully requests accelerated discovery, an accelerated hearing, and an order granting mandamus requiring TDCJ to produce the requested information.

#### **COUNT TWO: COSTS AND ATTORNEYS’ FEES**

LatinoJustice seeks a finding that it has substantially prevailed and an award of litigation costs and reasonable attorneys' fees incurred under Texas Public Information Act, Tex. Gov't Code § 552.323.

### **CONCLUSION AND PRAYER**

WHEREFORE, LatinoJustice respectfully requests that the Court set the foregoing matters for a full and final hearing on an accelerated basis at the earliest possible date, and, upon final hearing, grant the following relief:

- (1) entry of a writ of mandamus compelling TDCJ to produce the information requested;
- (2) entry of order finding LatinoJustice has substantially prevailed against TDCJ in this action;
- (3) an award granting judgment in favor of LatinoJustice for reasonable attorneys' fees incurred, court costs, and costs of litigation; and
- (4) such other and further relief, whether at law or in equity, as LatinoJustice may be entitled to receive.

Respectfully submitted,

Dated: July 13, 2021.

By: /s/ Jennifer A. Lloyd

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# **Exhibit 1**

## DECLARATION OF MICHAEL MAGOTO

1. I am over eighteen years old and a resident of the State of Texas. I make this declaration pursuant to Title 6, Section 132.001(d) of the Texas Civil Practice and Remedies Code.
2. On or about July 2, 2018, I began serving a sentence in case No. 17-1810-K26.
3. On or about May 14, 2020, the Board of Pardons and Parole ("Board") approved me for parole with a status of FI-6, meaning I can be released upon the completion of a six-month program.
4. The unit in which I was incarcerated when I was approved for parole, the Willacy County Unit, does not offer the programming I needed to complete in order to be released.
5. I was transferred to the Clements Unit in or about July 2020, but that unit does not offer any programming.
6. I was not transferred to a unit that offered the program I need until January 2021, when I was transferred to the Gist Unit, where I am currently incarcerated.
7. Since January 2021, I have been housed in a dorm in the Gist Unit that houses about fifty-six to fifty-eight men. The beds in the dorm are only about three feet from each other so social distancing is not possible.
8. When I arrived at the Gist unit in January, I met with a counselor for intake but did not have any counseling sessions at that time.
9. When I was first transferred to the Gist Unit, the entire bunk room was quarantined together, meaning that our movement was restricted and others did not come into the bunk room. But rules requiring face masks were not enforced, and we were not socially distanced from each other.
10. Even after the two-week quarantine period, we almost never saw a counselor in the dorm in the Gist Unit. Instead, we only received the workbook pages to fill out on our own.

11. Our only contact with a counselor was when one would come in every two weeks or so for about one hour.

12. During this period we were also required to document the time we had spent with a counselor. We were asked to fill out a sign-in sheet documenting that we had spent time with counselors.

13. Every day, we were asked to fill out paperwork confirming that we had done programming. Even though on days where we had done nothing all day but sit in the dorm and had not seen the counselor, we were told to fill out the form saying we had taken the programming.

14. In early February 2021, I was diagnosed with COVID-19. Based on my diagnosis, I was individually quarantined in the K Building, removed from the bunk room, and placed in a solitary cell.

15. While I was quarantined, on more than one occasion I was not provided any breakfast. When I later asked why I had not been fed, I was told that the officers assigned to bring me food were afraid to enter my cell for fear of contracting COVID-19 from me, and therefore had simply denied me food.

16. During the time I was in quarantine, I sought to file a grievance regarding my programming. I was told I would be given a grievance form, but I was not provided one.

17. During the time I was in quarantine, I was provided only written worksheets as part of my program.

18. During the time I was in quarantine, while TDCJ provided water to others who were being held in solitary in the K building, they did not regularly provide water to me. In my first two days in solitary when I had no water to flush the toilet in my solitary cell.

19. I eventually recovered and was returned to a different dorm from my original dorm in the Gist Unit to continue with what was described as programming.

20. When I returned to the dorm in the Gist Unit after my COVID-19 related quarantine, programming for the first time involved regular meetings with an in-person counselor.
21. During this time, approximately March 2021, a counselor would come to the dorm for four hours a day.
22. For these sessions, the counselor would meet in the bunk room and those of us in the room would sit on chairs to listen to her speak.
23. Programming continued with a counselor coming for four hours a day for about a month.
24. We continued to be instructed to fill out the timesheets showing that we had spent four hours a day with a counselor. During this period, the timesheets were accurate.
25. The sessions with a counselor lasted only about a month. Since about the end of March or the beginning of April, we returned to doing only written worksheets.
26. After about a month, programming resumed with a counselor coming twice a week for one hour at the most.
27. During this time, and continuing through May 2021, I have been instructed to fill out timesheets documenting time spent with a counselor even though I have not seen a counselor.
28. The written work that I am being given as part of my program in the Gist Unit is substantially similar to work I have previously been given as part of the CHANGES program, which I previously completed.
29. During this period, instead of being provided with individual workbook packets, we were given a single sheet of paper, posted on the wall, with questions to answer. Everyone in the dorm had to read the single piece of paper and copy out the questions in order to answer them.
30. In May of 2021, I was tested for COVID-19 again. After I tested negative, I was moved to a "COVID-safe" dorm. Despite the fact that we are in the "COVID-safe" dorm, we are

still eating with people who are from other dorms and interacting with officers whose COVID status is unknown.

31. In mid-June 2021, I was informed that I had completed my programming and would be released on July 6, 2021.

My name is Michael Magoto, my date of birth is October 7, 1976, and my Texas Department of Criminal Justice identifying number is 02209052.

I am presently incarcerated in Gist Unit, located at 3295 FM 3514, Beaumont, Texas, 77705. I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 30 day of June, 2021.

M. Magoto

Michael Magoto



# **Exhibit 2**

## DECLARATION OF JERRED DENTON

1. I am over eighteen years old and a resident of the State of Texas. I make this declaration pursuant to Title 6, Section 132.001(d) of the Texas Civil Practice and Remedies Code.
2. I was incarcerated in TDCJ from June 10, 2015 until February 5, 2021.
3. On January 24, 2020, I was informed that the Board of Pardons and Parole had voted to make me eligible for parole with a status of FI-6-R.
4. As I understood it, a status of FI-6-R made me eligible for release once I had completed a six-month “Pre-release Therapeutic Community” program.
5. The Pre-release Therapeutic Community program was not offered in Robertson Unit, where I was incarcerated, so I needed to be transferred to a different unit to undergo the program.
6. When COVID-19 began to spread in the TDCJ, non-emergency transfers were either suspended or delayed. I was originally scheduled to transfer to the Hamilton Unit in June, where the program would take place, but as non-emergency transfer, my transfer was delayed.
7. I was eventually transferred to the Hamilton Unit, on August 10, 2020, seven months after the Board of Pardons and Parole voted to approve my parole.
8. When I arrived at the Hamilton Unit, I was evaluated. I was informed that the evaluation was to determine whether I was “chemically dependent,” and that I would be able to complete the program in three months instead of six if the person evaluating me determined that I was not “chemically dependent.”
9. After my evaluation, I was deemed to be “chemically dependent” and was told the program would take six months.
10. During my program, I lived in Dorm B-1 in Hamilton Unit.

11. In this dorm, I lived with about 63 other people who were also enrolled in the same program and who started the program at the same time.

12. The bunks were arranged against the walls with about three feet between them. There was a row of sixteen bunks on each side of the room, with an upper and a lower bunk for a total of 64 beds in the dorm.

13. I was provided two cloth masks to cover my face when outside the bunk area. We were not required to wear masks in the bunk area.

14. Before any programming began, the entire dorm was quarantined for two weeks. During the two-week quarantine period, counselors would sometimes provide us written work or speak through the door of the dorm about what we were supposed to do. I was told that when programming began, a counselor would be present every day for an hour of direct programming. Once the program actually began, this was not the case.

15. Once the Pre-release Therapeutic Community Program began, it generally consisted of completing daily worksheets.

16. It also sometimes consisted of meeting in a group sessions with a counselor. These meetings were not consistent. Sometimes counselor would visit twice a week, once a week, or not at all.

17. After the quarantine period ended, each week, a schedule showing the days and times the counselors were scheduled to visit the dorm was posted in the day room of Dorm B-1 in the Hamilton Unit. The schedule stated that the counselors would be present from 12:00 PM to 4:00 PM on Tuesdays and Thursdays.

18. However, in practice, the counselors often did not show up on the scheduled days and when they did, were at most only present for approximately one hour on Tuesdays and Thursdays.

19. We were split into three groups for the sessions with a counselor. Each group would generally meet with a counselor for twenty minutes. At times, however, if only one counselor was present and one group met with the counselor for the full hour, the other groups did not meet with a counselor at all.

20. On days we did not see a counselor (which was most days) we received written work instead. The written work consisted of a few printed pages with assignments in them. Each time, we were only given one set of pages for the entire dorm to share, which required all 64 people to each take turns writing out the assignment on a separate sheet of paper.

21. The assignments required us to either write out a short written response to a set of short questions or complete written assignments out of a workbook.

22. There were approximately twenty workbooks for the dorm to share. As with the written assignments, we also had to copy the assignment from the workbook onto a separate sheet of paper.

23. These written assignments were provided daily and were required to be turned in at the end of the week. Specifically, we were asked to place them in a folder. The folders had the counselor's name on the front of it and was managed by one of the persons also undergoing the program.

24. I rarely completed the assignments. When I did complete the work, it took from ten to thirty minutes to complete.

25. Some people in the dorm filled out the worksheets with intentionally outrageous answers to see if they were being checked. I personally observed one person in the program who copied straight from the dictionary into the workbook.

26. No one ever provided me any feedback on assignments I turned in. Others in my bunk who intentionally wrote outrageous answers also reported to me that they had never received any responses to their workbooks.

27. The only substantive assignments I completed were associated with completing Phase 1, Phase 2, and Phase 3 of the program. These assignments were separate from any other programming.

28. In order to move to the next phase, we were asked to complete two to three short essays. We then met with a separate counselor who informed us whether or not we were moving on to the next phase. These meetings only happened on three occasions—one for each phase—and each only lasted for about five minutes. At no point during any of the three separate meetings were the other daily assignments or group sessions discussed.

29. As part of the general and daily programming, I was also required to fill out a timesheet each week that documented the amount of time of direct and indirect programming that I had received for that week.

30. These timesheets were provided to us by the counselor on each day of programming and were collected each Sunday night.

31. A sample completed timesheet was posted in the day room, on the same board where the counselors' schedule was posted.

32. This sample timesheet was filled out to show that we had received one hour of "direct programming" and three hours of "indirect programming" each day.

33. In reality, we had received at most one hour of direct programming a week, and at most twenty to thirty minutes of "indirect" programming per day. For the times I actually completed the written assignments, in reality, I had only received ten to thirty minutes of programming.

34. I filled out the timesheets with incorrect information because I believed I could be disciplined, including losing my parole status, if I did not do so.

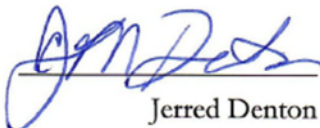
35. I observed one program participant question the accuracy of the timesheets. He was told by a counselor that he had to fill out the timesheet as requested or he would receive a program extension. I don't know if the counselor followed through with the threat.

36. I completed my program on January 10, 2021 and was released from TDCJ custody on February 5, 2021.

My name is Jerred Denton, my date of birth is October 26, 1980, and my address is 1475 Sawdust Rd., Apt. 9105 Spring, Tx 77580, and United States.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

  
Jerred Denton

# **Exhibit 3**

### DECLARATION OF JOSHUA LADD

1. I am over eighteen years old and a resident of the State of Texas. I make this declaration pursuant to Title 6, Section 132.001(d) of the Texas Civil Practice and Remedies Code.
2. On or about October 18, 2018, I began serving a sentence in the Texas Department of Criminal Justice ("TDCJ").
3. On or about October 2019, the Board of Pardons and Paroles ("Board") approved me for parole with a status of FI-6R, meaning I could be released upon completion of a six-month program.
4. After I was approved for parole, I was unable to start my program for five months. During that time I remained incarcerated in the Telford Unit.
5. I began taking my program in early April 2020. The program took place in the Gist Unit.
6. While in the Gist Unit, I filled out a survey that had been distributed by Texas Advocates for Justice regarding the programming delays, conditions in the units, and programming content.
7. I responded to the survey and I also sent a letter. A true and accurate copy of the letter that I sent is attached to this declaration as **Exhibit A**.
8. My statements in the letter were true and accurate at the time and are true and accurate today.
9. For example, as I wrote, the content of the programming did not include any meetings with counselors except during the time we "phased up" (meaning when we moved from one "phase" of the program to the next).



10. Instead of meeting with counselors, we were given paperwork to do. As I wrote in the letter, while I did the written work, many others did not. There was no indication that anyone was reading or responding to our written paperwork.

11. When I sent the letter, I included a sample of the assignments that we were compelled to do. A true and accurate copy of that sample is attached hereto as **Exhibit B**.

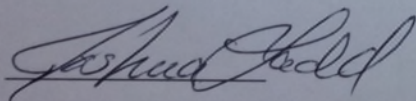
12. While Exhibit B is dated May 7, 2020, sometimes we would receive identical assignments from one week to the next with the old date crossed out and a new one written in.

13. The forms in which we were required to record our hours were substantially similar to the form attached hereto as **Exhibit C**.

14. On a bulletin board in the bunk room, a sample timesheet was posted directing us how to fill out our timesheets. This timesheet did not reflect the hours that we actually spent in programming, but we were told that if we did not fill out our timesheets to match it, we would have our programming extended or otherwise be disciplined.

15. I completed my program on or about September 2020 and was released on or about November 17, 2020.

My name is Joshua Ladd, my date of birth is October 2, 1974, and my address is 2661 East 11<sup>th</sup> Street, Odessa, TX, 79761. I declare under penalty of perjury that the foregoing is true and correct. Executed in Ector County, State of Texas, on the 9<sup>th</sup> day of July, 2021.



Joshua Ladd

# **Exhibit 3-A**

TAS:

This letter is just a quick informative letter to supplement the survey.

99% of people here, including myself, were delayed for months of our scheduled start date, which prolongs the program completion date of everyone, in turn creating a perpetual waiting list that never decreases or gets caught up.

The entire program is a scam, period. We are not programming, but of course are threatened with program extensions if we do not fill out the tracking sheets, which translate into "billable hours". So we are participating in this fraud if we want to go home.

I sent in an example of our daily assignments used just to say we are programming. Everybody just writes bogus crap so they can get out. The "program" is ridiculous. Each of us could do this from home, if we aren't in groups for Covid-19 anyway, and we see no counselors AT ALL except when we "phase-up" in which we sign a form essentially saying we are programming, yet they also provide a copy of appropriate answers for these "test". Anyone else committing this fraud would be



charged with a felony. They are only keeping us for monetary gain. The tracking sheets and sign-in sheets are so our "paper audit" upon completion looks legitimate for the parole board. No body looks at or grades ANY paperwork. I have 15 pages of essays that I wrote as part of my Master Treatment Plan, only to find out no one looks at them, no one asks for them, and no one cares, I get laughs because I actually did them, for rotary.

We've been eating a peanut butter & meat sandwich everyday, 3 times a day. No fruits, No vegetable nothing to possibly build our immune systems up. on weekends we get ~~stuffed~~ dicked a meal, only getting fed twice a day. The rations are hardly enough to sustain a 10 year old child.

We get no recreation, we get one five-minute phone call a day - and that just started, it was cut off completely. I feel like I'm in a 3rd world country. No visits, no food, no rec, .

I've written to Austin Parole Board and requested reconsideration, as have numerous other offenders, yet we receive no response, our families try to find

# **Exhibit 3-B**

EXAMPLE

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

5/7/2020



REHABILITATION PROGRAMS DIVISION  
Gist IPTC/PRSAP

The following Alternative Treatment Program/Assignments are for clients assigned to Phase II (Cognitive) of treatment.

10-minute break between each hour \* times can be adjusted

**First Hour of Programming:**

For each component on a Self- Control model describe how you met each need while at home.

**Second Hour of Programming:**

For each component on a Self- Control model describe how you met each need while in prison.

**Third Hour of Programming:**

Why is determining your thinking errors so important to change?

**Fourth Hour of Programming: Self Study**

How can you Euphoric Recall cause a relapse, what can you do to combat that?

Each client is responsible for completing all assignments each day as independent study. If the client is in a *Direct Service Hour* with a counselor during one of the above noted assignments, they will still be responsible for the assignment. The *Direct Service Hour* (process group of ~ 10) held by staff, will be discussing the assignments from the previous day. Group sign in sheets, in accordance with SATOM, will be maintained for each *Direct Service Hour*.

Example

APPROVED: APR 0

# **Exhibit 3-C**



**Weekly Summary Progress**

Client's Name: McKinzie Robert E.  
 Last First M.I.  
 Counselor: Wilson

TDCJ #: 2132746 Dorm: D2-3V Phase: 74  
 Reporting Week: 5-25-20 - 5-31-2020

	MON	TUES	WED	THUR	FRI	SAT	SUN	Totals
<b>Direct Treatment Hours</b>								
General Meeting / Family Dynamics								
Encounter Group								
Process Group								
Phase Groups								
Life Skills								
Step Work								
Peer Education (HIV)								
Orientation								
Cognitive Intervention Group / Mapping								
Individual Session(s)								
Marching								
Affirmation Group								
<b>Totals</b>								
<b>Indirect Treatment Hours</b>								
Chapel Classes								
Family Meeting (AMD or PMD)								
12-Step / SOS / Celebrate Rec/ Groups								
Winners Circle Peer Support								
Big Brother / Little Brother (Time Spent)								
Alternative Treatment Program	5	5	5	5	5			25
Treatment Work / GI								
Parenting								
Outside Support Group Meetings (T, W, F, S)								
<b>Totals</b>	5	5	5	5	5			25

TDCJ Job Assignment/ Change: NONE Education/Changes: NONE Structure Position: NONE

Tickets Written:  Slips Written:  L.E.'s Received:  TPRs Received:  Encounters Received:  Given:

Family participation: Visit:  Mail: 2 Phone Call: 1 Family Ed:  From Whom: Friends / Family

DO NOT WRITE BELOW THIS LINE

Client Received: \_\_\_\_\_ Direct Treatment Hours \_\_\_\_\_ Indirect Treatment Hours \_\_\_\_\_

Client did not receive 20 Direct Service Hours due to:  Medical Lay-In  Education  Security Issue  Staff Training  TDCJ Job  Holiday Schedule  Other: \_\_\_\_\_

Did He Attend Make Up Group?  Yes  No

Stages of Change:  Pre-Contemplation  Contemplation  Preparation  Action /  Maintenance

Other Comments: \_\_\_\_\_

Counselor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_



# **Exhibit 4**

# Enhancing Care Through Virtual Visits

## Building a Framework for Evidence-Based Virtual Treatment Delivery

**Klementyna Weyman, LCSW**  
Hazelden Betty Ford Foundation

**Javier Ley, DPC, LCAC, LPC**  
Valley Hope Association

April 2020



Hazelden Betty Ford  
Foundation

Since March 2020 the Hazelden Betty Ford Foundation has taken several steps to adjust to COVID-19. A few of these steps include ensuring our residential services remain open while implementing robust safeguards to minimize risk to clients and employees. As part of this effort, we are offering all intensive and outpatient services virtually.

We're expanding our virtual portfolio for training and consultation, including translating how to use our top evidence-based treatment curriculum, *Living in Balance*, to deliver standardized, efficient clinical care in a virtual environment.

We believe we are all in this together, and the Hazelden Betty Ford Foundation wants to help and support our partners and colleagues in the field.

This guide is part of a larger series being offered by the Hazelden Betty Ford Foundation focused on providing clinicians with resources during these challenging times. Using Hazelden's *Living in Balance* curriculum as a model, this guide will share key elements of program design affected by a shift to virtual delivery, how to effectively adapt program design, and ways for clinicians to manage stress. Because the focus of this guide is on program design and delivery in the virtual setting, we will only briefly address network security and how to choose the best platform for your organization. For questions on IT or network security, we refer you to your respective IT department. Those experts are your best resource.

In addition, there are some basic questions you will want to keep in mind when you are choosing an online learning platform:

1. What are your clients' technical capabilities?
2. How easily can you build courses or online experiences?
3. Is there mobile capability? Does it have a responsive design?
4. Does the provider of the platform provide adequate customer support?
5. Can I develop learning experiences that are accessible to all learners?
6. Can I "push" content to the learner as it is needed?
7. Does the system allow me to track clients' progress?
8. How can I communicate with my clients using this system?
9. How secure is the system? Is it compatible with your confidentiality needs?
10. How many people will need to access the system at one time and total—both clinicians and clients?
11. Do you need different levels of access—administrator view, client view, etc.?
12. What type of learning tools are provided with the platform? In building courses?
13. What type of back end data can be gathered? Is that data consistent with the type of data you need to collect?
14. Do you want an "out-of-the-box" solution, or do you need to build your own?
15. What is the pricing model?

For a comparison of different learning management systems, visit [elearningindustry.com](http://elearningindustry.com).

Delivering services within a virtual environment can sound like a daunting prospect. But when we're talking about virtual environments, we're just talking about interaction facilitated by technology. A virtual environment is made up partly of the online platform and tools we use to interact with our clients and the structure of the group or the evidence-based practice that we use.

As mentioned previously, this guide won't be going into much depth on which platform is best to use, but as a very brief note on compliance, check with your agency to make sure your chosen platform is HIPAA-compliant. Also check with your state licensure board about requirements for telehealth. It may require you to have a telehealth-specific training before providing virtual services. Many state boards have waived the training requirements for the current health crisis, but some have not.

As with other technological advances, when we shift to virtual service delivery, there are some things that will change, but many things will remain the same. And just like with other changes, virtual service delivery does bring with it some pros and cons. Let's talk about some of the potential drawbacks first.

## **Absence of Physical Presence**

The absence of physical presence does take some getting used to. Virtual service delivery is not an exact one-for-one replacement for in-person interaction. Even with a webcam, we lose access to some body language, such as hand gestures and so on, because we can see only what's in the frame. Sometimes facial expressions or tone may come across differently since we may not have access to the whole context of a situation as we would if we were in the same room with a client.

To provide a real-life analogy, think about the difference it makes in an interaction when there's a desk between one person and another. Judges or bankers may have a desk between themselves and their client, while a clinician may not. Just having that piece of furniture between two people changes the dynamics of an interaction. Figuring out how to navigate these challenges of physical distance will be an adjustment for both the client and the clinician. However, it isn't as much of a barrier as a lot of people fear it to be.

## **The Need for Additional Equipment**

Virtual service delivery does require additional equipment for all parties involved. This requires time and resources for both client and clinician. This is something to keep in mind when considering how virtual services will be delivered. Is equipment something my clients have the means to obtain?

## **Distractions and Disruptions**

Technical difficulties, such as slow connections, disconnects, and poor internet service can be disruptive to a session and frustrating for all involved. Distractions also abound when people are at home, and they can be very tempting to indulge in.

Virtual environments do bring with them a lot of potential benefits and opportunities.

## **Convenience and Accessibility**

Virtual environments are generally convenient and accessible. Having access to virtual service delivery can remove a lot of barriers and make therapy easier to get to for both the client and the clinician. Access to a means of transportation or money for transportation is a barrier that's removed when in a virtual environment. Access to childcare becomes a little less of a concern as well when the client can access therapy services from home.

## **More Modes of Communication**

Virtual environments offer multiple pathways for communication and self-expression. Those can include not only voice communication but things like text, pictures, and emojis. This is something that we, as clinicians, will want to keep in mind for several reasons. One, how someone chooses to communicate may give us insight into other ways to communicate back, and two, how people choose to communicate can be indicative of how they remember things or how they learn. Both of those things can help them better connect with treatment-related material.

## More Creative Ways to Present Content

Virtual environments can present opportunities for creativity, especially in terms of how the material is presented, because there is more access to other forms of media. For those of us who are not particularly artistic, we can access visuals that help our clients better understand concepts presented in treatment. If we have videos to show, we now can do that without having to book a particular room or to set up a TV and a DVD player. Video assets are readily available on the internet.

However, just as you would in an in-person setting, be sure to review any video content you use before presenting it to clients. You want to make sure the content is appropriate. You don't want to show anything that may be offensive to someone. Screening the content beforehand also allows you to ensure that it's connected to the objectives of the treatment curriculum that you're using, such as *Living in Balance*.

Some pictures or video clips that we find online may seem great, but if we give them a second look or play them all the way through, we may learn that they don't convey the specific ideas we thought they did or they don't connect to the material well. By collecting appropriate online content that directly relates to various sessions of *Living in Balance*, you can develop a list or a library of video assets on critical recovery concepts and add to it over time.

## A Comfortable Environment

Last, virtual service delivery allows clients to be in a familiar environment while getting treatment, which can be comforting. The absence of physical presence may even make it easier for some individuals to participate. For example, someone who has a hard time talking in front of a group may feel more comfortable sharing in text chat.

When we're moving service delivery to a virtual platform, there are three key points we want to consider. Those are accessibility, structure, and preparation.

## Accessibility

When we're adopting virtual methods of service delivery, there are two key questions we need to ask ourselves. One is: What kind of access do my clients have to communication technology? What does that look like for them? And two, is that access reliable?

The type of access a client has is going to determine what adaptations we, as clinicians, need to make to our program materials and how they're delivered. Most of our clients will have access to one of three options:

- **Option 1: Audio with two-way video.** Think something like a webcam, a microphone, and an internet connection.
- **Option 2: Audio with one-way video.** In this case a client doesn't have a webcam but still has access to a microphone or telephone and an internet connection.
- **Option 3: Audio only.** In this case a client has access only to a phone or an internet connection or cell phone plan that isn't good enough for video or streaming.

Again, our response is going to be different based on which of these options our clients have access to.

### **Option 1: Audio with two-way video**

This is probably the option most of us hope for, where clients can see the clinician and can see everyone else. Everyone can communicate with everyone else. If this is the case, there may be less for the clinician to change.

Consider getting your materials out to clients ahead of time, either through email or through a client portal. Having their own copy, whether that copy is a physical or digital version of the client materials, allows clients to go through them at their own pace or to go back and reread them if they missed something.

Role-plays can still happen on camera, especially given adequate preparation, for example, if the role-play scenario is sent out to clients ahead of the session. Clients may surprise you with their creativity in doing role-plays virtually.

The capacity for small-group work may depend on the platform, so be aware of that if there are group activities that require clients to break into pairs or groups of three. It will depend on whether your chosen platform allows you to create virtual breakout sessions. These breakout sessions allow smaller group connections where people can have interactions separate from the rest of the larger group. The structure of the *Living in Balance* curriculum, including the handouts and activities, makes it very well suited to this type of breakout work.

### **Option 2: Audio with one-way video**

Say your clients have access to an internet connection and some form of audio, either a microphone or a telephone, but they don't have a webcam. They can see and talk to you, but you can't see them. This is where you will need to change some things about how you interact. Role-plays are going to be more challenging to do with just voice to rely on. It is very difficult to role-play for a lot of people without having something to emote at.

However, various forms of relevant content can still be shared in both directions, such as pictures or video. Screen sharing, streaming, text chat, and voice chat are still open avenues of communication. Given that the visual contact will be one-way, this type of setup may necessitate use of more direct methods of getting engagement and participation. This may include asking for participation verbally or asking more direct questions than might be otherwise used. It may involve using text chat for questions or using polls where participants can either type in an answer or click on one of several options. That still provides an avenue for clients to interact with you and to show that they are engaged even if they're not always talking.

Consider also what clients see and hear. If your clients can see you but you can't see them, then you may need to be a little bit more intentional about emoting, especially vocally. This helps convey that you're engaged and listening, even when you can't see whom you are talking to.

### **Option 3: Audio only**

In this case, clients don't have access to an internet connection that's good enough for any kind of video or visual, or they don't have a laptop or a tablet at all and have access only to a phone. This is the most challenging setup of all, and it can be frustrating for both the clinician and the client.



Think back to the last conference call you attended, where everyone could talk with one another but no one could see anyone else. Navigating group discussions with only vocal cues to rely on is challenging. This may mean that extra effort needs to be made to ensure that clients have access to the material well in advance. You may also want to consider assigning any written work well ahead of time, as this maximizes the time spent on discussion and may help minimize long periods of silence on the line while people write.

Because a voice-only environment leaves no access to visuals, this also makes it hard to do role-plays because you don't have anything to emote at. All communication needs to be verbal.

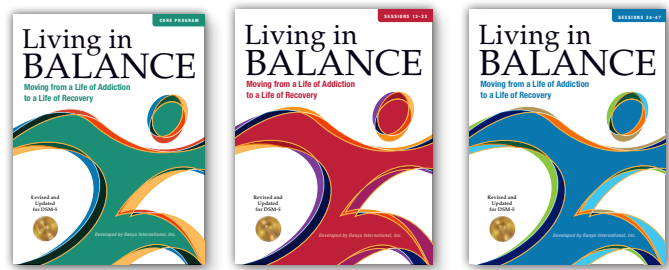
You may also want to think about what verbal communication practices look like in group and how the existing culture and norms of the group may need to shift to account for having this be your only avenue of communication.

Small changes, such as having speakers identify themselves before they share, can make a big difference in ensuring clarity. That is not too different from current practices in face-to-face Twelve Step support groups. Finding real-life examples like this when we are changing the rules and changing the expectations may help to normalize these practices for clients. Navigating group discussions also takes a little extra patience to ensure that everyone gets the chance to talk.

## Structure

Structure refers both to the structure of your program and the structure or framework of the evidence-based practice being used. If you're running, for example, a three-hour intensive outpatient program (IOP) and you're shifting to online delivery, you might divide your time up differently than if you were delivering in person. You might add more breaks. You might weave in more activities designed to get people out of their seat, as three hours is a long time to sit in front of a camera or in front of a computer for most people.

As far as the structure of program materials goes, let's use *Living in Balance* as an example. *Living in Balance* is one of Hazelden's evidence-based treatment programs. It's made up of three curricula addressing a broad range of factors affecting recovery. The core program, made up of 12 sessions, addresses basic tools and skills our clients need when starting their recovery journey. Next come 25 sessions in recovery management, incorporating more advanced topics such as family relationships, parenting, and medication-assisted treatment.



The last set of materials, the co-occurring disorders sessions, are designed to help clients with these concerns to navigate their recovery. It covers things like the Twelve Steps for co-occurring disorders and how to ensure a recovery plan incorporates mental health needs.

One of the important things to know about *Living in Balance* is that it's meant to be an interactive program. Clients master core concepts related to recovery via experiential learning, so it requires active participation. This requires clients to be engaged, and engagement will depend on how the sessions are taught.

Two important strengths of *Living in Balance* that make it perfectly suited for delivery in an online format are the fact that it is flexible and adaptable. In terms of flexibility, it can be used as a core treatment model or an adjunctive strategy. It plays very well with other evidence-based practices, one might say. It can be used across a variety of program types and levels of care, and clients can join the treatment process at any point in program delivery.

*Living in Balance* is also adaptable. Delivery of the materials can be adjusted to address the needs of specific populations or to target certain issues related to recovery, such as trauma, anger management, family conflict, and so on. Other materials and other media can be used to enhance delivery of the program and to help clients better connect to the core concepts. How the program is adapted is up to the facilitator.

The printed materials for *Living in Balance* are very comprehensive. Each session is made up of multiple core elements, all of which can be reordered and readjusted to suit a specific population, clinician style, or delivery context.

The client handouts contain educational information in the form of readings and written exercises for clients to reflect on the material and how it applies to their experience. Group discussion is a key part for clients to process what they've learned, process their reactions to it, and learn and respond to one another. *Living in Balance* makes extensive use of role-play, visualization, and relaxation exercises to help clients acquire and practice new skills before they might need them in the real world.

Again, this is a program where clients are meant to learn by doing, as active participation confers an experience that can't always be replicated just through discussion. In addition to talking the talk, this helps clients to walk the walk and to put their new understandings into practice.

Use of video with *Living in Balance* is highly encouraged. The program includes some guidelines on how to use video within the context of a *Living in Balance* session. There is also homework assigned between sessions for clients to apply what they've learned outside the context of treatment and further their learning by doing. Because this program is so highly adaptable, the clinician has a wide array of options to choose from when assigning clients practice between sessions. This isn't just limited to written work. If you facilitate a session by just going through the handouts, this may mean you're missing some of these critical interactive elements.

*Living in Balance* includes a structure that is meant to be used in each session. Structure helps create a sense of safety as well as predictability, so clients know what to expect. Each session is designed to be about an hour and a half to two hours long. You may have to adjust this for online delivery, as that might be a long time to ask clients to sit in a chair.

How you adjust each *Living in Balance* session, though, is up to you. You can put a break in the middle of a session to allow people to get up and stretch. You can break up the session by peppering in more activities, especially those that allow people to move around.

Generally, a session starts with a check-in and a brief relaxation exercise, and then you provide an overview of the session content. Next, you facilitate the session, lead an optional role-play or visualization, and, at the end, you summarize the learning. There is a Quick Start Guide included with the program materials that lists the session format and steps for how to conduct each element. It can be found in the back of the facilitator guide and on the CD-ROM with other reproducible materials, and it is also available on Hazelden OnDemand, a digital subscription service.

Now that we've reviewed the key elements and session format, let's look at some examples of how *Living in Balance* might be delivered online. Starting with check-in, many of us have a standard format for group check-in that we like to use, but it doesn't always necessarily have to be something like, "What's your name? How are you feeling today? And what's your goal?"

Especially when delivering online, you now have access to more options. Imagine asking clients to show you a picture that captures how they're feeling. Again, this allows for a different kind of self-expression that may not be readily available when delivering face-to-face. Or imagine asking for something like a link to the worst movie they've seen. This still allows clients to share something about their recent experience between sessions but in a little bit different way.

*Living in Balance* makes extensive use of relaxation exercises. Relaxation is a skill that we want to encourage our clients to practice so they have it readily available when it's needed. There is a 10-minute recorded meditation included with the program materials in two versions, one with guided narration and one without. That recording is also available through Hazelden OnDemand. Alternatively, if you have a guided meditation that you really like that's available elsewhere, such as on YouTube, you can play that. As you can see, more options are available when it comes to virtual delivery.

Now let's talk a little bit about delivering the session. As you've seen, this is a program that isn't all talk, and it certainly does not have to be. Delivery in a virtual environment offers additional opportunities to go beyond handouts, worksheets, and discussion. Consider creating a presentation that highlights the key elements of the material, especially something that uses a lot of visuals. The written materials can still be read or narrated, but showing a PowerPoint slide with a picture illustrating a key concept helps clients connect to the material in a richer way. Audio and video clips work too.

One of the great strengths of virtual platforms is that you have the whole of the internet at your fingertips. Resources abound. Of course, one of the big caveats is that you have the whole of the internet and all that comes with it. Be careful to screen your content ahead of time, so you know exactly what's in it. This helps you better connect it to the core concepts in each *Living in Balance* session and allows you to start creating that library of online resources, session by session.

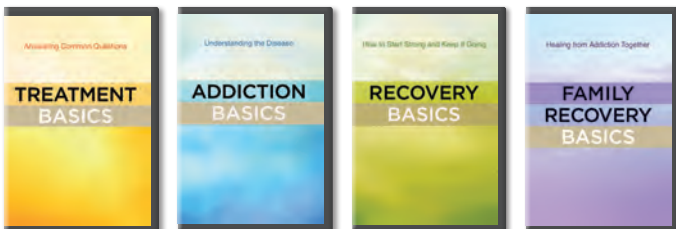
With homework or practice assigned between sessions, again, you have flexibility. You can have clients use pictures, audio, or video as part of activities and assignments. Set expectations ahead of time regarding what kind of content is permissible and appropriate, but again, allowing clients these kinds of options helps them better connect with the material and perhaps even develop a deeper understanding.



# Accessibility, Structure, and Preparation

Text chat is also an important tool in an online environment and something that you need to remember to pay attention to. Some clients may be more comfortable sharing via text than voice, some may have questions but don't want to interrupt the speaker, and so on. It's certainly something that you can leverage in order to promote engagement and interaction, even when you're not sitting face-to-face.

Hazelden also has additional resources available for video content. One such resource is the *Basics Video Series*, which includes *Addiction Basics*, *Treatment Basics*, *Recovery Basics*, and *Family Recovery Basics*. Each video in the series is composed of short video segments covering a range of topics related to a central theme. The videos incorporate interviews with people in recovery and their family members. Again, this can help clients connect with session material. The same information can come across quite differently if it's coming from a peer versus from a clinician. Each video includes a facilitator guide with background information, client educational handouts, and pre-written discussion questions. It also has a Quick Start Guide with instructions on how to create a 50-minute psychoeducational session from each video, so it can be used as a standalone educational resource as well.



Enough information is included in the Basics Video Series facilitator guide so that even someone who doesn't have a lot of experience or preparation time can still facilitate a discussion. Given the current situation with COVID-19, access to a resource like this can be helpful if a clinician needs to cover a virtual group session for someone else on short notice, without a lot of time to prepare. It can also be used with families. If family members can't attend programming or visit with participants due to physical distancing for health and safety reasons, they can be sent the handouts from *Family Recovery Basics* ahead of time. Again, these materials are available on Hazelden OnDemand with a digital subscription.

These are just a few examples of the crosswalk between *Living in Balance* sessions and the *Basics Video Series* to illustrate how the videos can be used to enhance virtual delivery. This list is by no means extensive or exhaustive,

as there are plenty of other examples, but it illustrates how the concepts are complementary, so that both programs can be used very well together.

Here is an excerpt from *Living in Balance* session 35, Chronic Pain and Opioids.



The key concept from this segment is that there is a cycle that can develop with chronic pain that can lead to opioid tolerance and dependence. This cycle can be difficult to break, even in the absence of addiction. If we're delivering this content in an online format, we can get creative. Instead of just talking or reading about it, we can create a graphic, as seen here, that illustrates that same core concept. The addition of pictures may help clients make an emotional connection to the material, something a little bit more personal, and possibly help them relate it to their own experience.

Session three talks about triggers, cravings, and avoiding relapse. Here is an excerpt from the materials, which talks about the four-step process by which a trigger can lead to relapse—trigger, thought, craving, use.



Again, instead of just reading the text, when you're delivering online, you have the option of creating a graphic to illustrate that same concept.

You can also get creative with activities and assignments. Earlier, the use of pictures and video in addition to written work was discussed. Here's an example of an assignment you could create that goes well with several *Living in Balance* sessions.

## EXERCISE

### Recovery Capital Show and Tell

Have each client submit a picture or short video showcasing the "recovery capital" they have access to at home.



This is called Recovery Capital Show and Tell. By recovery capital, we mean what resources do clients have at their disposal that help them maintain their recovery in some way?

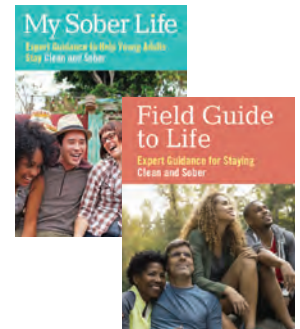
This is especially important at a time like this, when by practicing physical distancing, clients may not be able to attend peer support meetings. You can have clients submit a picture or short video showing the recovery capital they have access to at home. Someone might submit a picture and say something along the lines of, "This is my mindfulness nook."

They then get a chance to talk about how it works and what it does for them in terms of helping support and maintain their recovery.

This can be used as an assignment with several sessions. For example, *Living in Balance* session eight talks about stress and emotional well-being and how important it is to maintain our emotional well-being. Session nine goes into detail about skills to reduce stress. Session 32 talks about spirituality and personality, and it has a section on meditation, its practice, and potential benefits. Session 33, advanced relapse prevention, and many other sessions, also talk about this topic.

There are also mobile apps. Many clients may have access to a mobile phone. Hazelden offers many apps, but there are two that pair very well with core concepts presented in *Living in Balance*—The Field Guide to Life and My Sober Life. Each app offers several tools to help support an individual's recovery and keep him or her motivated and on the right track.

The apps have a tool that allows the user to save his or her relapse prevention and relapse response plans right in the app. Such plans, as well as the importance of planning, are explained and developed across several *Living in Balance* sessions, including session four on planning for sobriety, session 12 on relapse prevention basics, and session 33 on advanced relapse prevention.



There's a tool in each app that helps with cravings and motivation. It allows users to upload pictures of things that might motivate them in recovery, something that illustrates what they want in life, be that health, relationships, a career, or pictures of people who are important to them, such as friends and family.

The app users can look at those pictures when they're struggling with motivation or experiencing a craving. The pictures can help them to practice the skill of thought-stopping. This goes well with session three, as we already saw before with trigger, thought, craving, use, as well as with session nine, which talks about practicing stress reduction. The apps also have a function that helps clients track power-ups and obstacles that they encounter daily. Power-ups are positive resources that they have or tools that they're using to maintain their recovery.

Tracking is an important skill that helps to build awareness and identify patterns, and those patterns can then be changed, if needed. The tracking tool can be used as a complementary resource in session 10, which talks about negative emotions, or session 21, which talks about human needs and social relationships. Again, this is by no means an exhaustive list, but it illustrates how the evidence-based *Living in Balance* curriculum and the tools available in each app mesh very well. The goal is to help create a bridge between treatment and home.

## Preparation

Preparation is the third critical area we want to look at when shifting to online delivery. Again, some of this won't be too different from the preparation we would do for in-person sessions, but because the context has changed, we now have some extra things to take into account or some things to consider building into our routine. Preparation refers to both preparing our clients and preparing ourselves.

Let's start with clients. First, you will want to make sure your clients know the rules and expectations of virtual individual and group sessions. You want to let your clients know what's going to change and what's going to stay the same, and you want to be explicit and intentional. You don't want to assume that someone shares your understanding, in the same way you wouldn't assume the same in an in-person group. Those rules and expectations don't have to be a one-way conversation. Anytime you are making changes like this, it really helps to be transparent about it and to involve the client or the group in the discussion.

To give an example, earlier we talked about accessibility and about groups where every client has access to a webcam. What happens if one person in the group doesn't have a webcam or chooses to turn it off? Do you allow it? Do you move that person to another group? Not necessarily. That might depend on things like the existing group dynamic, how long the group has been meeting together, how it makes the other group members feel, especially in terms of trust and safety, and several other factors. It isn't a clear-cut black and white decision, and there are benefits to having an open discussion with clients about such changes.

Address confidentiality very clearly. If you're offering a virtual group session, you want clients to participate but in a way that protects their confidentiality and the confidentiality of others. Giving some clear guidelines about basics may help. Things like reminding them that if they're participating on webcam, to make sure they're not in a public place; that they're in a place where they won't be interrupted by others or their screen won't be seen; that they should use a headset instead of broadcasting sound over speakers or on speakerphone, and so on.

Consider also taking the time to orient clients to the platform that's being used. You want them to know how to use it, where the text chat is, how to log in and out, and where their mute button is. Remember, it will take them some time to acclimate. If you're orienting your clients, of course this means that by extension you also need to be oriented to the platform and to know where these things are.

When you're delivering services to a client who's likely to be at home, video conferencing can sometimes lead to boundary issues. Clients may need gentle reminders every so often to treat virtual sessions just as if they were coming to your office or to your agency in person.

You will also want to take the time to prepare yourself, and again, some of this may be the same as if you were delivering sessions in person. Just like with face-to-face sessions, you want to organize your information ahead of time. You want to be prepared knowing your program materials, knowing what you're going to cover in the session and what's for homework. You want to send session materials to clients ahead of time. This includes not only handouts but any additional resources, such as video links or audio files that you may want them to have access to.

Handouts from curricula such as *Living in Balance* can be printed and sent to clients via regular mail, which does require more lead time, so do keep that in mind. They can also be sent by email, or they can be distributed via a client portal for clients to download. For *Living in Balance*, the client handouts for each individual session are available to clinicians via Hazelden OnDemand.

Consider again converting visuals to an online format. If you don't have any existing visuals, this can be your opportunity to create some: images, video clips, quotes, anything you can use to demonstrate a point or reinforce a concept in a different way. And of course, you want to be aware of what it is that clients are seeing and hearing. You need to be aware of what's around you and especially what's behind you. When you screen-share, you want to make sure you're aware of what exactly it is that you're sharing and take steps to make sure you're maintaining your boundaries and protecting confidentiality.

There are some habits that you can make part of your routine to help with this. If you have another client's notes up on your computer, you want to make sure that you've closed them completely before a session. If you get reminders or pop-ups from email or calendar apps, it may help to turn those off or close the apps. If you have other browser tabs open, make it a part of your routine to close the ones that are not relevant to what's going on in group. To be on the safe side, tend toward closing everything and hiding everything. This is, again, like what you would do in a physical office—you would ensure your computer screens are locked, that any protected health information is put away, that your cell phone isn't out. You likely may not have personal pictures up. It's about applying those same skills you've used before in a little bit different context.

Of course, part of preparation is practicing stress management. We have a lot on our plates right now. Change by itself is hard. Most recently we've had a lot of massive changes in the world, and a lot of big things have suddenly become different almost overnight. There are a lot of unknowns, and that leaves people feeling stressed and scared. On top of that, you are now taking your services virtual, taking an evidence-based practice virtual. That's one more change on top of everything else.

In terms of managing your own stress, there are some practical suggestions for adding to your stress management toolkit. Practicing mindfulness, particularly mindful acceptance of what's going on, is important.

Be aware of your own thinking patterns, especially if you find yourself doing things like catastrophizing or immediately jumping to the worst-case scenario. Reframes can be very helpful in situations like this. Is there another way to think about this? Is there another way to look at this? Things may be hard right now, but is it possible that what you're describing as a challenge can really be an opportunity in disguise?

Routine now is more important than ever. It can provide us with some sense of structure to contain us even as our definition of normal changes. Self-care is also important. Make sure you're taking the time to attend to your own physical and emotional health. This is back to basics. Are you eating properly? Are you getting enough sleep?

None of us can pour from an empty cup. We need to take the time to replenish our own resources. Practice relaxation exercises. Now can be a good opportunity for us to start doing these exercises or to start again. Use humor but of course with appropriate audiences. Our clients are not going to be that audience, but maybe colleagues or friends or family members can be. And, of course, get your fill of the news that you need and then disconnect. There can be a lot of misinformation out there. Spending too long Googling things on the internet and reading article after article, post after post online can be draining on our emotional resources and can have an impact on our mental and emotional health.

All of this guidance should help you as you look to transition your implementation of evidence-based practices, such as *Living in Balance*, to a virtual experience.

## Summary

When we speak about a virtual care strategy, we need to ask ourselves the question: Is virtual care a temporary response to the pandemic, or is it something that has merits in our post COVID-19 world? We may all find that when the COVID-19 crisis is over, our clients are more than ready to continue their care virtually, which will allow us to expand our services in new and creative ways.





## Valley Hope

Here is an example of how one organization transitioned the *Living in Balance* program to a virtual setting.

Valley Hope is a not-for-profit addiction treatment provider. It has been serving clients across seven states in the Midwest. It started its journey more than 50 years ago in a small rural town in Northwest Kansas. Starting in 2007, Valley Hope had offered telehealth services, called Telecare. It had 1,100 clients in that program, but it was downsized. Financial sustainability as a self-pay model was a challenge. However, the portal and the technological infrastructure remained. That was a key factor in its current circumstance, as it provided the organization with a head start in moving to virtual care delivery.

In early 2019, Valley Hope was in search of an evidence-based treatment solution. It reviewed many different programs, identifying the pros and cons of each. A few things really jumped out at staff about the *Living in Balance* program—three elements that really resonated with Valley Hope, who it is, and where it wanted to go in terms of treatment and recovery programming.

One of those elements was *Living in Balance's* emphasis on recovery management. As it moved away from an “acute model of care” perspective into more of a “self-management of recovery perspective,” having this emphasis was very important. Also, *Living in Balance* has an emphasis on co-occurring disorder education. Given the prevalence of these disorders in the populations they serve, this was also important. The third issue that became very important was the ability to create tracks so the content of the *Living in Balance* curriculum could be personalized for individual clients or client groups.

Valley Hope selected *Living in Balance* as its evidence-based solution. Staffers participated in curriculum training during the summer of 2019 and then started rolling out the program in their Omaha outpatient facility. A couple of months later, it was rolled out in their O'Neill, Nebraska, residential facility.

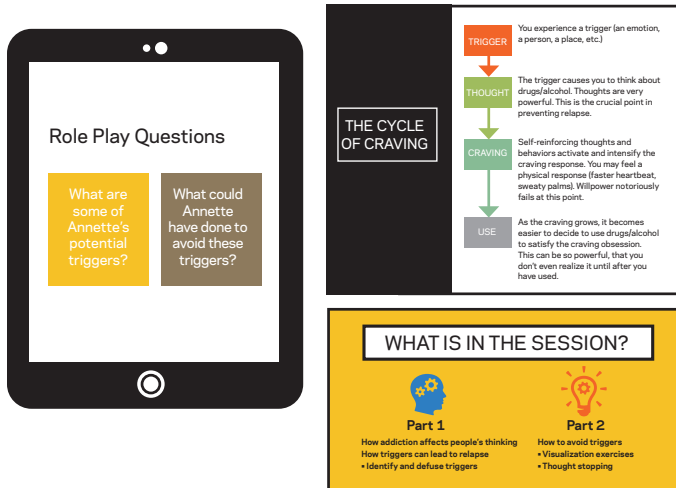
The plan was then to start rolling out the program in other markets as well. At the beginning of 2020, the organization had started conversations about expanding the use of the *Living in Balance* program with all Valley Hope clinicians when the COVID-19 issues started becoming more relevant in their daily lives. Already having experience with *Living in Balance* implementation and an already existing client portal played a critical role in allowing them to quickly shift outpatient services to 100 percent online.

The organization began preparation on March 10, 2020, to have the Omaha facility move forward with virtual care. At that time the plan was to transition one facility at a time, but that plan quickly changed with increasing concern about COVID-19. Valley Hope decided to transition all outpatient facilities to virtual care as quickly as possible. Intensive training needed to happen in that process to get clinical staff and administrative teams all using the virtual platforms in a very short period of time. The teams also received training on ethics and confidentiality issues that are specific to virtual care.

There also needed to be support for transitioning their clients to the virtual world. Clients signed a consent for virtual treatment that explained the risks and benefits of virtual care. Clients also needed coaching on the use of the platforms and coaching on the expectations and regulations of participating in virtual care. The Valley Hope team made it happen. On March 17, 2020 (one week later), clinicians began virtual services at the Omaha outpatient facility.

What do these services look like, and how did they implement the *Living in Balance* curriculum in a virtual format? They used *Living in Balance* content in interactive lectures. A *Living in Balance* lecture takes anywhere between 60 to 75 minutes. That happens at the beginning of a three-hour outpatient session. That's followed by a break and then a process-oriented group.

For the interactive lectures, they created *Living in Balance* PowerPoint presentations. What you see here are example slides from one of these presentations.



They made sure the presentations include items found in the program's fidelity checklist, so they follow the evidence that supports the *Living in Balance* curriculum.

The fidelity checklist has two components:

The first component is a session preparation and delivery format to make sure the PowerPoint presentations display relevant talking points. There's also an overview of what a client will learn, which is used as a review during a session summary.

The second component of the fidelity checklist relates to how a counselor interacts with clients. Does the counselor display enthusiasm and energy? That can be different in a face-to-face environment versus a virtual environment. Does the counselor develop rapport with individuals but also with the whole group?

Valley Hope also includes meditations and role-plays in presentations. Staff members are also working on the best way to distribute printed materials. The easiest option is uploading worksheets as PDF files into a portal, but copyright restrictions are being discussed with the publisher.

The organization wants to construct the *Living in Balance* worksheet exercises in its portal so a client can type in his or her responses right onto the screen. Another possible option is mailing the hard copy materials to clients if that is their preference.

Throughout this transition to virtual programming, there were challenges, victories, and opportunities.

## Challenges

- The need to create the virtual program and train staff in a very short, condensed timeframe
- The technological needs for both staff and for the clients
- Process adjustments that needed to happen. For example, intakes look different now. Intake staff now need to onboard clients onto the electronic portal.
- Communication between clients and clinicians. With the portal, there's a secure, direct messaging function that can be used to allow communication between clinician and clients.
- Privacy issues about finding the right place for clients to be at during a three-hour IOP session

## Victories

- First and foremost, the continuity of care that prevailed for the clients. They were able to continue providing lifesaving treatment to clients in early recovery, assuring they can continue in recovery.
- A safe space created for both clients and staff, even during the COVID-19 pandemic
- The benefits of convenience and accessibility. Now *Living in Balance* can be delivered to more people in more places. The organization can reach clients in rural communities. It can also better support clients who are stepping down from a residential facility and who don't live in communities conveniently located near outpatient programming.
- Comfort. Clients quickly adapted to the platform and, in some cases, they were sharing more than they would usually in a face-to-face meeting.

## Opportunities

- Enhancement. Valley Hope continues to work to improve the client experience in the virtual world. How can this be a more seamless experience for clients? How can clients be more engaged in this sort of medium?
- Multimedia. The organization is looking at introducing streaming video from its Hazelden OnDemand digital subscription into the *Living in Balance* lectures.
- Enhanced features. Staffers are analyzing other functionalities of the platform. For example, there's whiteboard capability in which the counselor can write a keyword or a key concept as he or she is talking with clients.

- Smaller groups. Valley Hope is also looking at the ability for breakout sessions. This would allow smaller groups within a therapy session to break out into separate virtual spaces for discussions or assignment work. Clients could then come back to the larger group and share what they did or discussed.
- Continuing education. The organization would also like to continue clinician training with a focus on the research that supports virtual services both in terms of outcomes and therapeutic alliance.
- Client input. Staff members would like to gain a deeper understanding of client preferences and needs. For example, will there be an increasing number of clients who prefer virtual care as their first option? Will it be preferred by those who have social anxiety issues and don't want to participate in a face-to-face interaction?
- Moderator perspective. This is a good opportunity for clinical supervisors to spend time understanding the perspective of their clinicians and having honest and transparent conversation. Clinicians need to engage in conversations with their clients as well. Where are our clients at in their ability to access and benefit from virtual care? Do they think this is going to work for them? Do they think this is a barrier that will impede their recovery, or can they find benefits in this sort of medium?

## About the Authors

**Klementyna (Ky) Weyman** is a licensed clinical social worker from the state of Florida. Her work and direct practice has focused not only on provision of services but also on program development and implementation of evidence-based practices for co-occurring disorders, with a focus on young adult and veteran populations.



She also has a passion for teaching. With extensive involvement in the training of other clinicians in risk assessment and crisis intervention, her current areas of interest include finding synergy between evidence-based treatment modalities for co-occurring disorders, implementation and organizational change processes, and integration of care across providers and treatment delivery systems. She is a graduate of Tufts University and the University of Central Florida.

**Dr. Javier Ley** is the senior vice president of operations for the Midwest for Valley Hope Association, a not-for-profit addiction treatment provider that has offered effective treatment and compassionate care since 1967.



Dr. Ley oversees business and clinical operations in Kansas, Nebraska, and the Missouri markets. Prior to Valley Hope, Dr. Ley worked at the Hazelden Betty Ford Foundation as program manager for residential services in Center City, Minnesota. Javier has also been instrumental in leading projects that introduce evidence-based addiction treatment in Central America, including motivational interviewing, *Twelve Step Facilitation*, the *Matrix Model*, and *Seeking Safety*. He has served as co-chair for the International Certification and Reciprocity Consortium (ICRC), the world's largest credentialing body of addiction professionals. He is credentialed as a licensed clinical addiction counselor and licensed professional counselor in the state of Kansas. Dr. Ley has earned a doctorate and master's degree in counseling and a bachelor's degree in finance.

# Exhibit 5





January 20, 2021

Justin Brock  
Research Coordinator  
Texas Department of Criminal Justice  
Executive Services  
PO Box 99  
Huntsville, TX 77342-0099

**Re: Request Under Texas Public Information Act for Materials Related to the  
Rehabilitations Programs Division Programs**

**Via Email:** [justin.brock@tdcj.texas.gov](mailto:justin.brock@tdcj.texas.gov)

Dear Mr. Brock,

I am a Senior Counsel at LatinoJustice PRLDEF and make this request to the Texas Department of Criminal Justice (“TDCJ”) pursuant to the Texas Public Information Act, Gov’t Code § 552.001 (the “Act”).

I can accept the requested documents in digital format. They may be emailed to me as an attachment or delivered through an FTP/FTA system at the email address [acase@latinojustice.org](mailto:acase@latinojustice.org).

Pursuant to Section 552.221(d) of the Act, if you cannot produce the information within ten (10) business days of the date requested, you shall “certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.” Ten business days from today is **Wednesday, February 3**, and therefore you must provide the requested information by that date or provide me with a date and hour when the information will be available.

### **Documents Requested**

All documents related to the establishment, implementation, operation, enrollment, and certification of any program that the Texas Board of Pardons and Paroles has required any detained person to complete as a condition of release since January 1, 2016.

#### *Programs Covered*

We request documents related any program that the Texas Board of Pardons and Paroles has required any detained person to complete as a condition of release since January 1, 2016 (each a “Program” and together the “Programs”), including but not limited to the following Programs identified on your website [here](#).

Returning Population Gang Renouncement and Disassociation Program  
Baby and Mother Bonding Initiative (BAMBI)  
Cognitive Intervention Transition Program  
Corrective Intervention Pre-Release Program  
Champions Youth Program (CYP)



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800.328.2322

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[latinojustice.org](http://latinojustice.org)

In-Prison Driving While Intoxicated (DWI) Recovery Program  
“InnerChange” Faith-Based Pre-Release Program  
Serious and Violent Offender Reentry Initiative Program (SVORI)  
Sex Offender Rehabilitation Programs  
State Jail Substance Use Program  
Substance Use Treatment Program, *including each of the following*: (i) The Substance abuse Felony Punishment Facility (SAFPF), (ii) The In-Prison Therapeutic Community (IPTC), (iii) The Pre-Release Substance Abuse Program (PRSAP), (iv) The Pre-Release Therapeutic Community (PRTC), (v) The Intermediate Sanction Facility (ISF), (vi) The Driving While Intoxicated In-Prison Program, (vii) The State Jail Substance Use Program  
Our Roadway to Freedom Program

### *Relevant Documents*

For each Program, we specifically request the following documents:

- The Program’s Curriculum, including all lesson plans, guidance to instructors, assignments to participants, and rubrics for evaluating a participant’s responses.
- Metrics, rubrics, or evaluations used to certify that a Program participant has completed the Program successfully.
- Qualifications of Program instructors, including any required certifications and the certifying body.
- For any Program that is administered by a private vendor, any documents relating to the engagement of the vendor, including but not limited to the contract between the vendor and TDCJ and a history of any and all programming provided by the vendor.
- Policies and procedures that allow for incarcerated individuals who are disabled to complete the Program.
- Policies and procedures that allow for incarcerated individuals whose primary language is not English to complete the Program.
- Protocols used to assess the performance of the Program.
- Protocols used to determine whether to include the Program within the Rehabilitation Division’s Programs.
- Results of any third-party evaluations of the Program.

You may call me at any time regarding this request at 212-739-7506 or email me at [acase@latinojustice.org](mailto:acase@latinojustice.org) with any questions about this request.

Thank you for your time and attention to this matter.

Andrew Case

# Exhibit 6



January 20, 2021

Justin Brock  
Research Coordinator  
Texas Department of Criminal Justice  
Executive Services  
PO Box 99  
Huntsville, TX 77342-0099

**Re: Request Under Texas Public Information Act for Materials Related to the  
Rehabilitations Programs Division Programs**

**Via Email:** [justin.brock@tdcj.texas.gov](mailto:justin.brock@tdcj.texas.gov)

Dear Mr. Brock,

I am a Senior Counsel at LatinoJustice PRLDEF and make this request to the Texas Department of Criminal Justice (“TDCJ”) pursuant to the Texas Public Information Act, Gov’t Code § 552.001 (the “Act”).

I can accept the requested documents in digital format. They may be emailed to me as an attachment or delivered through an FTP/FTA system at the email address [acase@latinojustice.org](mailto:acase@latinojustice.org).

Pursuant to Section 552.221(d) of the Act, if you cannot produce the information within ten (10) business days of the date requested, you shall “certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.” Ten business days from today is **Wednesday, February 3**, and therefore you must provide the requested information by that date or provide me with a date and hour when the information will be available.

### **Documents Requested**

All documents related to the establishment, implementation, operation, enrollment, and certification of any program that the Texas Board of Pardons and Paroles has required any detained person to complete as a condition of release since January 1, 2016.

#### *Programs Covered*

We request documents related any program that the Texas Board of Pardons and Paroles has required any detained person to complete as a condition of release since January 1, 2016 (each a “Program” and together the “Programs”), including but not limited to the following Programs identified on your website [here](#).

Returning Population Gang Renouncement and Disassociation Program  
Baby and Mother Bonding Initiative (BAMBI)  
Cognitive Intervention Transition Program  
Corrective Intervention Pre-Release Program  
Champions Youth Program (CYP)



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In-Prison Driving While Intoxicated (DWI) Recovery Program  
“InnerChange” Faith-Based Pre-Release Program  
Serious and Violent Offender Reentry Initiative Program (SVORI)  
Sex Offender Rehabilitation Programs  
State Jail Substance Use Program  
Substance Use Treatment Program, *including each of the following*: (i) The Substance abuse Felony Punishment Facility (SAFPF), (ii) The In-Prison Therapeutic Community (IPTC), (iii) The Pre-Release Substance Abuse Program (PRSAP), (iv) The Pre-Release Therapeutic Community (PRTC), (v) The Intermediate Sanction Facility (ISF), (vi) The Driving While Intoxicated In-Prison Program, (vii) The State Jail Substance Use Program  
Our Roadway to Freedom Program

### *Relevant Documents*

For each Program, we specifically request the following documents:

- The Program’s Curriculum, including all lesson plans, guidance to instructors, assignments to participants, and rubrics for evaluating a participant’s responses.
- Metrics, rubrics, or evaluations used to certify that a Program participant has completed the Program successfully.
- Qualifications of Program instructors, including any required certifications and the certifying body.
- For any Program that is administered by a private vendor, the contract between the vendor and TDCJ and a list of each program that vendor has provided since January 1, 2019.
- Policies and procedures that allow for incarcerated individuals who are disabled to complete the Program.
- Policies and procedures that allow for incarcerated individuals whose primary language is not English to complete the Program.
- Protocols used to assess the performance of the Program.
- Protocols used to determine whether to include the Program within the Rehabilitation Division’s Programs.
- Results of any third-party evaluations of the Program.

You may call me at any time regarding this request at 212-739-7506 or email me at [acase@latinojustice.org](mailto:acase@latinojustice.org) with any questions about this request.

Thank you for your time and attention to this matter.

Andrew Case

# **Exhibit 7**



## Texas Department of Criminal Justice

Bryan Collier  
Executive Director

March 3, 2021

Honorable Ken Paxton  
Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, TX 78711-2548

RE: Public Information Request Submitted by Andrew Case – OGC#MW0058

Dear Mr. Attorney General:

On January 20, 2021, the Texas Department of Criminal Justice (TDCJ) received a request under the Public Information Act (PIA) from Andrew Case. The TDCJ submitted a copy of the request and a Request for Decision to your office on January 4, 2021.

The responsive records contain information that is excepted from disclosure under § 552.134, and 552.101 of the PIA.

To calculate the timeliness of this brief, please note that the TDCJ was closed on February 15, 2021, in observance of the Presidents' Day holiday.

To calculate the timeliness of this brief, please note that the TDCJ was closed on February 16, 2021 through February 19, 2021 due to inclement weather.

To calculate the timeliness of this brief, please note that the TDCJ functioned with a skeleton crew on March 2, 2021, in observance of the Texas Independence Day holiday.

### I.

Requestor, Andrew Case, is seeking all documents related to the establishment, implementation, operation, enrollment, and certification of any program that the TX Board of Pardons and Paroles has required any detained person to complete as a condition of release since 01/01/2016.

The responsive information that is excepted from required disclosure is attached.

Because the responsive records are voluminous and repetitive, the submitted material is a representative sample, as provided by section 552.301(e)(1)(D) of the PIA.

---

*Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.*

Office of the General Counsel

Kristen Worman, General Counsel – [Kristen.Worman@tdcj.texas.gov](mailto:Kristen.Worman@tdcj.texas.gov)

P.O. Box 13084 Capitol Station  
Austin, Texas 78711-3084

Phone (512) 463-9899, FAX (512) 936-2159

P.O. Box 4004

Huntsville, Texas 77342-4004

Phone (936) 437-6700, FAX (936) 437-6994

[www.tdcj.texas.gov](http://www.tdcj.texas.gov)

## II.

### **Section 552.134 Exception: Certain Information Relating to TDCJ Inmates**

Texas Government Code, § 552.134(a) states in relevant part that,

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Tex. Gov't Code § 552.134 excepts from public disclosure information about an inmate confined in a facility operated by the TDCJ except certain information required to be disclosed by Section 552.029, Government Code.

Here, the responsive information is excepted from release pursuant to Section 552.134 as information about an inmate confined in a TDCJ facility. The requested information is not information made public by § 552.029 or § 552.021. Furthermore, simply redacting the names of the offenders on the records is insufficient because the requestor can re-identify of the offenders involved. The public could easily connect the redacted information with a particular offender, thus rendering any redaction meaningless. Therefore, all the information submitted herewith that relates to specific offenders must be withheld in its entirety to effectuate the purpose of § 552.134.

## III.

### **Section 552.101. Confidential by Law**

Section 552.101, Texas Government Code states, in relevant part,

“Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

Section 552.101 protects information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This exception encompasses information that other statutes make confidential.

### **SUBSTANCE USE DISORDER PATIENT RECORDS:**

Additionally, § 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or judicial decision.” Section 552.101 encompasses information protected by other statutes. Public Health Code, 42 C.F.R. § 2 regulates the confidentiality of substance use disorder patient records and provides methods for disclosure.



42 C.F.R. §§ 2.31-2.35 address disclosure with patient consent. 42 C.F.R. §§ 2.51-2.53 address disclosure without patient consent. 42 C.F.R. §§ 2.61-2.67 address disclosure with a court order. Here, the requestor has failed to render authorization for access to such information and has failed to provide a release to disclose with patient consent for each inmate, in accordance with §§ 2.31-2.35. The request does not qualify for a disclosure without patient consent, in accordance with §§ 2.51-2.53. Also, the requestor has failed to provide a court order to disclose the requested information. Based on these facts, and in light of the specific federal regulations, the TDCJ believes the requested information must be withheld.

#### IV.

For the foregoing reasons, the TDCJ asserts the requested records should not be available to this requestor or to any other member of the public.

Sincerely,



William Overton  
Assistant General Counsel

cc: Andrew Case  
acase@latinojustice.org

WPO/mcw

The TDCJ requests that you send your ruling to:

Texas Department of Criminal Justice  
Office of the General Counsel  
ATTN: William Overton, Assistant General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

# Exhibit 8



March 11, 2021

Honorable Ken Paxton  
Office of the Attorney General  
Open Records Division  
PO Box 12548  
Austin, TX 78711-2548

RE: Public Information Request – OGC#MW0058

Dear Mr. Attorney General,

I am senior counsel at LatinoJustice PRDLEF (“LatinoJustice”). I am writing pursuant to § 552.304 to provide written comments to the March 3, 2021 request for an attorney general opinion by the Office of the General Counsel for the Texas Department of Criminal Justice (“TDCJ OGC”) in the above-referenced matter (the “TDCJ Letter” attached hereto as **Exhibit A**). I have complied with § 552.304(b) by sending a copy of these comments to the TDCJ.

On January 26, LatinoJustice requested basic information about the curricula, evaluation metrics, instructor qualifications, contracts, policies, and protocols related to rehabilitation programs provided to inmates at TDCJ (the “Programs”) (the “Request,” attached hereto as **Exhibit B**). The Request did not seek any information about any individual program participant, or any indication of which inmates have taken which Programs. It did not seek any information “about an inmate” at all.

The TDCJ Letter is both procedurally and substantively deficient. For the reasons set forth below, LatinoJustice respectfully requests that you order the TDCJ to produce the information sought in the Request.

## **I. The TDCJ Letter Is Procedurally Deficient**

### **A. The TDCJ Letter Does Not Comply with Section 552.301(e)(1)(C)**

In the TDCJ Letter, the TDCJ OGC writes: “On January 20, 2021, the Texas Department of Criminal Justice (TDCJ) received a request under the Public Information Act (PIA) from Andrew Case. The TDCJ submitted a copy of the request and a Request for Decision to your office on January 4, 2021.” (**Ex. A**)

Even accounting for the scrivener’s error (“January 4” most likely should read “February 4”), according to the dates provided by the TDCJ, the fifteen-day deadline expired on **February 10**, a full three weeks before the TDCJ submitted its response. Thus, the “signed statement as to the date on which the written request for information was received by the government body or evidence sufficient to establish that date” does not establish that the request is timely. § 552.301(e)(1)(C).

The TDCJ Letter is the “sole evidence” of the timeliness of the TDCJ’s request. Tex. Att’y Gen. Op. No. OR2001-05209 (requiring production of documents when evidence submitted by requesting public agency did not establish timeliness). When the agency does not provide “sufficient evidence showing the date the city received the request as required by section 552.301 (e)(1)(C)” and has



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“failed to comply with section 552.301 of the Government Code,” the information must be produced. Tex. Att’y Gen. Op. No. OR2018-23895. Thus, even if the TDCJ could furnish additional information to render its response timely, the deadline for doing so has passed.

In any event, the TDCJ does not provide support for its claim that the closure of its office due to inclement weather from February 16 to February 19 tolls the fifteen-day deadline.<sup>1</sup> Indeed, your office has previously ruled that when an office is closed for inclement weather, certain business operations, such as payroll, continue. *See, e.g.*, Tex. Att’y Gen. Op. No. JC-0131 (1999) (when a county official closes an office for inclement weather, it must still pay employees for their time). TDCJ should not be allowed to extend its deadline without citing any applicable law, statute, or rule.

Because the TDCJ has not complied with Section 552.301, the requested information is presumed public and must be produced under Section 552.302 absent a “compelling reason” to withhold disclosure. § 552.302. *See* Tex. Att’y Gen. Op. No. OR2020-22194 (ordering TDCJ to produce records based on a failure to follow the procedure set forth in Section 552.301).

## **II. The TDCJ’s Cited Exemptions do not Prohibit the Release of the Requested Information**

In addition to its procedural deficiency, the TDCJ letter cites objections that do not prohibit the release of the information requested. LatinoJustice seeks basic information about the operation and structure of the Programs. LatinoJustice has not requested information about any program participant. The request pertained only to the generally applicable operation of the rehabilitation Programs.

By invoking objections relating to inmate confidentiality and medical concerns, TDCJ has misconstrued the scope and nature of LatinoJustice’s request.

### **A. Section 552.134 Does not Except from Disclosure the Excepted Information**

The TDCJ writes that it has provided sample documents for your review and that “simply redacting the names of the offenders on the records is insufficient” to merit production. (TDCJ Letter at 2.) But no requested documents would have the name of any inmate on them to begin with.

Here, the requested information is not specific to any inmate—LatinoJustice seeks only the general information regarding the operation of the Programs. If Section 552.134 prevented the production of any TDCJ operations because, at some point, those operations affected an inmate, nearly every aspect of TDCJ’s operations would be protected.

### **B. Section 552.101 Does not Except from Disclosure the Excepted Information**

Likewise, Section 552.101 does not exempt the requested information from disclosure. The TDCJ states that the requested documents are confidential because they are “substance use disorder patient records.” (TDCJ Letter at 2.) But this statement again misconstrues the nature of the Request. We

---

<sup>1</sup> The TDCJ is correct that Presidents’ Day and Texas Independence Day are recognized holidays and therefore not “business days” for purposes of Section 552.301. *See* Tex. Gov. Code § 662.003(a)(3) and (b)(2).

do not seek any individual patient records, nor the treatment history of any individual. Because we have requested basic curricula, evaluation metrics, and protocols associated with the Programs, and not any enrollment information or information related to any inmate's individual treatment, there is no "patient" from whom consent could be sought or granted.

For the above-stated reasons, LatinoJustice respectfully requests that you hold that the Texas Department of Criminal Justice must produce the materials sought in the Request.

Sincerely,

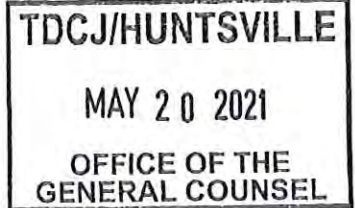
A handwritten signature in black ink, appearing to read "Andrew Case". The signature is fluid and cursive, with the first name "Andrew" and the last name "Case" clearly distinguishable.

Andrew Case  
Senior Counsel  
LatinoJustice PRLDEF

# Exhibit 9



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS



May 17, 2021

WO 05.20.21

Mr. William Overton  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2021-12999

Dear Mr. Overton:

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# 879654 (OGC# MW0058).

The Texas Department of Criminal Justice (the "department") received a request for information related to specified programs.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>2</sup> We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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. 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 requestor asserts the department did not comply with the requirements of section 552.301 of the Government Code. See Gov't Code § 552.301(b), (e). See Gov't Code § 552.301(b), (e). Regardless, because sections 552.101 and 552.134 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the claims of the department under those sections.

<sup>2</sup> We 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.



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

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,

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/rm

Ref: ID# 87954

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

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

# **Exhibit 10**



January 26, 2021

Justin Brock  
Research Coordinator  
Texas Department of Criminal Justice  
Executive Services  
PO Box 99  
Huntsville, TX 77342-0099

**Re: Request Under Texas Public Information Act for Grievances Related to the Provision of Rehabilitations Programs**

**Via Email:** [justin.brock@tdcj.texas.gov](mailto:justin.brock@tdcj.texas.gov)

Dear Mr. Brock,

I am a Senior Counsel at LatinoJustice PRLDEF and make this request to the Texas Department of Criminal Justice ("TDCJ") under the Texas Public Information Act, Gov't Code § 552.001.

I can accept the requested documents in digital format, and you may make redactions as required by law. Documents may be emailed to me as an attachment or delivered through an FTP/FTA system at the email address [acase@latinojustice.org](mailto:acase@latinojustice.org).

Pursuant to Section 552.221(d) of the Act, if you cannot produce the information within ten (10) business days, you shall "certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication." Ten business days from today is **Monday, February 8**, and therefore you must provide the requested information by that date or provide me with a date and hour when the information will be available.

### **Documents Requested**

- 1) All grievances filed with the TDCJ since May 22, 2020 that allege a person in TDCJ custody is not or was not able to participate in a program administered by the Rehabilitation Programs Division of TDCJ.
- 2) All responses to any grievance responsive to request (1), above.
- 3) The total number of grievances filed by individuals complaining that programming required by their parole is not available and the units where these grievances were filed since May 22, 2020.

Note that to the extent that you claim the grievances requested in request (1) contain personal information about an inmate not subject to disclosure pursuant to Section 552.134(a), that information may be redacted. In any event, the information requested in request (3) is "statistical or other aggregated information" and not subject to the restrictions of Section 552.134(a)



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[latinojustice.org](http://latinojustice.org)

To guide your search, this request seeks, but is not limited to grievances alleging that a Rehabilitation Program is not available because instructors are not permitted in the TDCJ facility pursuant to Executive Order GA-25 (May 22, 2020) or ***for any other reason.***

You may call me at any time regarding this request at 212-739-7506 or email me at [acase@latinojustice.org](mailto:acase@latinojustice.org) with any questions about this request.

Thank you for your time and attention to this matter.

Sincerely,

Andrew Case

# **Exhibit 11**



## Texas Department of Criminal Justice

**Bryan Collier**  
Executive Director

March 9, 2021

Honorable Ken Paxton  
Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, TX 78711-2548

RE: Public Information Request Submitted by Andrew Case – OGC#MW0061

Dear Mr. Attorney General:

On February 8, 2021, the Texas Department of Criminal Justice (TDCJ) received a request under the Public Information Act (PIA) from Andrew Case. The TDCJ submitted a copy of the request and a Request for Decision to your office on February 25, 2021.

The responsive records contain information that is excepted from disclosure under § 552.134, 552.103 and 552.101 of the PIA.

To calculate the timeliness of this brief, please note that the TDCJ administrative offices were closed on February 15, 2021 in observance of President's Day.

To calculate the timeliness of this brief, please note that the TDCJ administrative offices were closed on February 16, 2021 through February 19, 2021 due to inclement weather.

To calculate the timeliness of this brief, please note that the TDCJ functioned with a skeleton crew on March 2, 2021 in observance of Texas Independence Day.

### I.

Requestor, Andrew Case from Latino Justice, is seeking (1) all grievances filed with the TDCJ since 05/22/2020 that allege a person in TDCJ custody is not or was not able to participate in a program administered by the RPD of TDCJ. (2) All responses to the aforementioned grievances. (3) The total number of grievances filed by individuals complaining that programming required by their parole is not available and the units where these grievances were filed since May 22, 2020.

The responsive information that is excepted from required disclosure is attached.

Because the responsive records are voluminous and repetitive, the submitted material is a representative sample, as provided by section 552.301(e)(1)(D) of the PIA.

---

*Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.*

**Office of the General Counsel**

**Kristen Worman, General Counsel – [Kristen.Worman@tdcj.texas.gov](mailto:Kristen.Worman@tdcj.texas.gov)**

P.O. Box 13084 Capitol Station  
Austin, Texas 78711-3084  
Phone (512) 463-9899, FAX (512) 936-2159

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Huntsville, Texas 77342-4004  
Phone (936) 437-6700, FAX (936) 437-6994

[www.tdcj.texas.gov](http://www.tdcj.texas.gov)

## II.

### **Section 552.103, Exception: Litigation or Settlement Negotiations Involving the State or a Political Subdivision**

Texas Government Code, Section 552.103(a) and (c) state in relevant part that

- (a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
- (b) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under subsection (a) only if litigation is pending or reasonably anticipated on the date the requestor applies to the officer for public information for access to or duplication of the information.

Please see "Attachment A" for confidential brief.

## III.

### **Section 552.134 Exception: Certain Information Relating to TDCJ Inmates**

Texas Government Code, § 552.134(a) states in relevant part that,

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Tex. Gov't Code § 552.134 excepts from public disclosure information about an inmate confined in a facility operated by the TDCJ except certain information required to be disclosed by Section 552.029, Government Code.

Here, the responsive information is excepted from release pursuant to Section 552.134 as information about an inmate confined in a TDCJ facility. The requested information is not information made public by § 552.029 or § 552.021. Furthermore, simply redacting the names of the offenders on the records or investigation notes is insufficient because the requestor already knows the identity of the offenders involved. The public could easily connect the redacted information with a particular offender, thus rendering any redaction meaningless. Therefore, all the information submitted herewith that relates to specific offenders must be withheld in its entirety to effectuate the purpose of § 552.134.



#### IV.

##### **Section 552.101. Confidential by Law**

Section 552.101, Texas Government Code states, in relevant part,

“Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

Section 552.101 protects information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This exception encompasses information that other statutes make confidential.

##### **INMATE [OFFENDER] GRIEVANCES:**

As stated above, Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or judicial decision.” Section 552.101 encompasses information protected by other statutes. We believe that Offender Grievance forms (Step 1 and Step 2) are confidential under § 552.134 and that all supporting information is both confidential and privileged under § 552.101 in conjunction with § 501.008(c) which states:

- (c) A report, investigation, or supporting document prepared by the department in response to an inmate grievance is considered to have been prepared in anticipation of litigation and is confidential, privileged, and not subject to discovery by the inmate in a claim arising out of the same operative facts as are alleged in the grievance.


Inmate Grievances are the first steps in the administrative process necessary for an inmate to file a lawsuit against the TDCJ. All administrative processes must be exhausted prior to filing a cause of action with the courts. All Grievances are tracked and maintained in anticipation of litigation. All supporting documents are both confidential and privileged and may not be released under the PIA nor in discovery, per § 501.008.

Here the responsive information contains a list of inmate Grievances which is used to track the inmate Grievances through the various stages of the process. The list of inmate Grievances is compiled and may be used to garner specific information and statistical information in support of litigation. The TDCJ uses all the reports, investigations and supporting documents, of which the list of Grievances is a part, in the TDCJ’s defense in litigation. Because the information is confidential and privileged and was/is compiled and is used in anticipation of litigation, as well as ongoing litigation, the inmate Grievance information must be withheld under § 552.101 in conjunction with § 501.008 and may not be released to the requestor nor to the public at large.

**IV.**

For the foregoing reasons, the TDCJ asserts the requested records should not be available to this requestor or to any other member of the public.

Sincerely,

 for:

William Overton  
Assistant General Counsel

cc: Andrew Case  
acase@latinojustice.org

WPO/mcw  
Attachment

The TDCJ requests that you send your ruling to:

Texas Department of Criminal Justice  
Office of the General Counsel  
ATTN: William Overton, Assistant General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

# **Exhibit 12**



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

**TDCJ**  
**MAY 04 2021**  
**OFFICE OF THE**  
**GENERAL COUNSEL**

W.O. 05.04.21

April 30, 2021

Mr. William Overton  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2021-11258

Dear Mr. Overton:

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# 880208 [ORR MW0061].

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to specified offender grievances. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

---

<sup>1</sup> We 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 those records contain substantially different types of information than that submitted to this office.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both parts of this test for information to be excepted from disclosure under section 552.103(a). See ORD 551 at 4.

You state a lawsuit styled *Valentine v. Collier*, Docket No. 4:20-CV-01115, was pending against the department and several department employees in their official capacities in the United States District Court for the Southern District of Texas, Houston Division, upon receipt of the present request for information. You state the information at issue relates to the pending litigation because it pertains to the primary allegations that are the subject of the lawsuit. Based on your representations and our review, we find the department was a party to pending litigation at the time it received the present request and the information at issue is related to the pending litigation for the purposes of section 552.103. Accordingly, the department may withhold the submitted information under section 552.103 of the Government Code.<sup>2</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. See Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).

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->

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

[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,

Paige Lay  
Assistant Attorney General  
Open Records Division

PL./gw

Ref: ID# 880208

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

# **Exhibit 13**





March 15, 2021

Texas Department of Criminal Justice  
Office of the General Counsel  
PO Box 4004  
Huntsville, TX 77342

**Re: Request Under Texas Public Information Act for Program Materials**

**Via Email:** [PIA@tdcj.texas.gov](mailto:PIA@tdcj.texas.gov)

Dear Madam or Sir,

I am a Senior Counsel at LatinoJustice PRLDEF and make this request to the Texas Department of Criminal Justice (“TDCJ”) pursuant to the Texas Public Information Act, Gov’t Code § 552.001 (the “Act”). I can accept the requested documents in digital format. They may be emailed to me as an attachment or delivered through an FTP/FTA system at the email address [acase@latinojustice.org](mailto:acase@latinojustice.org).

### **Documents Requested**

We request nine categories of documents regarding each of a number of TDCJ’s rehabilitation programs (each a “Program” and together the “Programs”).

The categories of documents are set forth in **Section A**, below, and the Programs for which we request these documents are set forth in **Section B**, below.

LatinoJustice emphasizes that we are *not* requesting information that identifies any Program participant, whether an inmate or an instructor. We are seeking generally applicable information regarding the selection of programs, the curricula, and the methods that the TDCJ uses to evaluate whether these programs are effective.

The time period covered by this request is from January 1, 2016 through the present except when otherwise stated.

### **Section A – Categories of Documents**

- 1 The Program’s current curriculum, including lesson plans, assignments to participants, and rubrics for evaluating a participant’s responses. We **do not** seek any completed lessons, assignments, or evaluations.
- 2 Metrics, rubrics, or evaluations used to certify that a Program participant has completed the Program successfully. We **do not** seek any completed rubrics or any evaluation of any program participant.
- 3 Minimum professional standards required of instructors, including any required certifications and the certifying body. We **do not** seek any evaluation or identification of any particular instructor.
- 4 For any Program that is administered by a private vendor, the contract between the vendor and TDCJ and a list of each program that vendor has provided since January 1, 2019.



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800.328.2322

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[latinojustice.org](http://latinojustice.org)

- 5 Policies and procedures that allow for incarcerated individuals who are disabled to complete the Program.
- 6 Policies and procedures that allow for incarcerated individuals whose primary language is not English to complete the Program.
- 7 Metrics or protocols used to assess the Program's effectiveness in achieving its stated goals. We **do not** seek any completed protocols or any materials that identify program participants.
- 8 Protocols used to determine whether to include the Program within the Rehabilitation Division's Programs. We **do not** seek any completed protocols or any materials that identify program participants.
- 9 Results of any third-party evaluations of the Program.

**Note: if you determine that any category of documents for any program is subject to an exclusion under the Public Information Act, or if you choose to seek an opinion from the Attorney General regarding such category of documents, we request that you provide any responsive documents not subject to the exclusion or the requested opinion.**

### **Section B – Programs Covered**

We request the above categories of documents for each of the following programs:

Returning Population Gang Renouncement and Disassociation Program

Baby and Mother Bonding Initiative (BAMBI)

Cognitive Intervention Transition Program

Corrective Intervention Pre-Release Program

Champions Youth Program (CYP)

In-Prison Driving While Intoxicated (DWI) Recovery Program

“InnerChange” Faith-Based Pre-Release Program

Serious and Violent Offender Reentry Initiative Program (SVORI)

Sex Offender Rehabilitation Programs

State Jail Substance Use Program

Substance Use Treatment Program, *including each of the following:* (i) The Substance abuse Felony Punishment Facility (SAFPF), (ii) The In-Prison Therapeutic Community (IPTC), (iii) The Pre-Release Substance Abuse Program (PRSAP), (iv) The Pre-Release Therapeutic Community (PRTC), (v) The Intermediate Sanction Facility (ISF), (vi) The Driving While Intoxicated In-Prison Program, (vii) The State Jail Substance Use Program

Our Roadway to Freedom Program

Thank you for your time and attention to this matter.



Andrew Case

# **Exhibit 14**

## Andrew Case

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**From:** OGC Open Records <ogcopenrecords@tdcj.texas.gov>  
**Sent:** Monday, March 29, 2021 5:56 PM  
**To:** Andrew Case  
**Subject:** PIR - Andrew Case  
**Attachments:** PIR - Andrew Case.pdf; PIR - Andrew Case

Mr. Case,

The Texas Department of Criminal Justice is working diligently to compile the information responsive to your request received March 15, 2021. In accordance with Texas Government Code § 552.221(d), an additional 30 business days is required to process your request. The information you requested is anticipated to be available on April 28, 2021. We appreciate your patience and cooperation.

Thank you,

Office of the General Counsel-TDCJ

P: (936) 437-6700

The information contained in this email and any attachments is intended for the exclusive use of the addressee(s) and may contain confidential, privileged, or proprietary information. Any other use of these materials is strictly prohibited. This email shall not be forwarded outside the Texas Department of Criminal Justice, Office of the General Counsel, without the permission of the original sender. If you have received this material in error, please notify me immediately by telephone and destroy all electronic, paper, or other versions.

# **Exhibit 15**



# Texas Department of Criminal Justice

Bryan Collier  
Executive Director

May 4, 2021

Andrew Case  
acase@latinojustice.org

RE: Your Public Information Request dated March 15, 2021.

Dear Mr. Case:

The TDCJ has determined that complying with your request will result in the imposition of a charge that exceeds \$40; therefore, we are providing you with this cost estimate as required by Texas Government Code section 552.2615.

Itemized List of Charges:

Description	Quantity x Price	Total
Labor minutes (\$15 per hour)	45 hours x \$15.00	\$600.00
Overhead Charges	20% of 675.00	\$135.00
<b>Total Cost</b>		<b>\$810.00</b>

The estimated charge exceeds \$100.00; therefore, as allowed by Texas Government Code section 552.263(a), we require a bond in the amount of \$810.00 before starting work on your request.

Payment for all public information requests must be in the form of check, cashier's check, or money order and must be made payable to the Texas Department of Criminal Justice (TDCJ).

Please remit payment to the address listed below:

Texas Department of Criminal Justice  
Office of the General Counsel  
P.O. Box 4004  
Huntsville, TX 77342

---

*Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.*

Office of the General Counsel

P.O. Box 13084 Capitol Station  
Austin, Texas 78711-3084  
Phone (512) 463-9899, FAX (512) 936-2159

P.O. Box 4004  
Huntsville, Texas 77342-4004  
Phone (936) 437-6700, FAX (936) 437-6994

[www.tdcj.texas.gov](http://www.tdcj.texas.gov)

Sincerely,

A handwritten signature in blue ink, appearing to read 'William Overton', is positioned above the typed name.

William Overton  
Assistant General Counsel

WPO/mcw

Your request will be considered automatically withdrawn if you do not notify us in writing within 10 business days from the date of this letter that you either:

- (a) Accept the charges;
- (b) Wish to modify your request; OR
- (c) Sent a complaint to the Open Records Division of the Office of the Attorney General alleging that you are being overcharged for the information you requested.

Please check one of the options below, sign this document, and return it to the address provided.

Please continue processing my request. I accept these charges for copies of the responsive records and I understand full payment is due in advance. Payment or bond is enclosed.

I wish to revise this request as follows. I understand that a new Statement of Estimated Charges for Copies and/or Statement of Actual Charges for Copies will be prepared based on my revised request.

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I wish to view the copies of the information I requested and I acknowledge that the information can only be viewed at your location. I understand that I will receive a Statement of Estimated Charges for Inspection and/or a Statement of Actual Charges for Inspection.

I have sent a complaint to the Open Records Division of the Office of the Attorney General alleging that I am being overcharged for the information I requested.

I wish to cancel this request.

\_\_\_\_\_  
Signature of Requester

\_\_\_\_\_  
Date



# **Exhibit 16**

## Andrew Case

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**From:** OGC Open Records <ogcopenrecords@tdcj.texas.gov>  
**Sent:** Wednesday, June 2, 2021 2:19 PM  
**To:** Andrew Case  
**Subject:** PIR - Andrew Case  
**Attachments:** PIR - Andrew Case.pdf

Good afternoon,

The Texas Department of Criminal Justice is working diligently to compile the information responsive to your request received March 15, 2021. In accordance with Texas Government Code § 552.221(d), an additional 30 calendar days is required to process your request. The information you requested is anticipated to be available on Friday, July 2, 2021. We appreciate your patience and cooperation.

Thank you,

Office of the General Counsel-TDCJ

P: (936) 437-6700

The information contained in this email and any attachments is intended for the exclusive use of the addressee(s) and may contain confidential, privileged, or proprietary information. Any other use of these materials is strictly prohibited. This email shall not be forwarded outside the Texas Department of Criminal Justice, Office of the General Counsel, without the permission of the original sender. If you have received this material in error, please notify me immediately by telephone and destroy all electronic, paper, or other versions.

# **Exhibit 17**



March 15, 2021

Texas Department of Criminal Justice  
Office of the General Counsel  
PO Box 4004  
Huntsville, TX 77342

**Re: Request Under Texas Public Information Act for Program Materials**

**Via Email:** [PIA@tdcj.texas.gov](mailto:PIA@tdcj.texas.gov)

Dear Madam or Sir,

I am writing to make a request of the Texas Department of Criminal Justice (“TDCJ”) pursuant to the Texas Public Information Act, Gov’t Code § 552.001 (the “Act”). I can accept the requested documents in digital format. They may be emailed to me as an attachment or delivered through an FTP/FTA system at the email address [acase@latinojustice.org](mailto:acase@latinojustice.org).

### **Documents Requested**

- 1) **Texas Government Code Chapter 501.103 Reentry and Parole Referral Reports for 2017, 2018, and 2019.** The TDCJ website contains links for the report required by Tex. Gov. Code § 501.103 for [2015](#), [2016](#), and [2020](#). We request the reports for 2017, 2018, or 2019. If these are posted somewhere on the TDCJ website, a direction to the links will suffice as a response.
- 2) **Texas Government Code Chapter 501.092 Comprehensive Reintegration Plan for Offenders, including subsequent revisions and evaluations.** We request the TDCJ Comprehensive Reintegration Plan for Offenders. Note that we are *not* requesting any individual treatment plan created pursuant to Section 508.152, nor any information regarding any particular inmate at all. This request entails specifically the following documents:
  - a. The first Comprehensive Reintegration Plan created after Section 501.092 became law.
  - b. Each update to the Comprehensive Reintegration Plan that has been made as required by Section 501.092(d).
  - c. Each bi-annual report setting forth the results of the required evaluation conducted pursuant to Section 501.092(b)(7) as required by Section 501.091(i). To the extent that such a report includes information “about an inmate” as set forth in Texas Gov. Code § 552.134(a), we request a version of that report with all redactions necessary to remove inmate-related information. We note that statistical information is precluded from this exception pursuant to Texas Gov. Code § 552.134(b)(1).
- 3) **Any TDCJ Order Relating to the Administration of Programs in TDCJ Facilities Since March 1, 2020.** This request includes, but is not limited to:
  - a. **Any order reducing the number of available beds in a facility in which TDCJ offers programming.** For example, on Wednesday, March 10, Glen Gilmore, the facility director for the 33<sup>rd</sup> & 424<sup>th</sup> Judicial Districts Intermediate Sanction Facility testified to the Texas House of Representatives Committee on Corrections that on



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800.328.2322

New York, NY | Orlando, FL | Central Islip, NY | Austin, TX  
[latinojustice.org](http://latinojustice.org)

March 10, 2020, he issued a directive to reduce the ISF population to 50% capacity. (Available at the 1:53 mark on [this video](#)). This directive, along with any directive issued at any TDCJ facility that had the result of reducing the number of available beds in the facility, would be covered by this request.

- b. **Any order limiting access to TDCJ facilities by individuals who conduct programming in those facilities.** For example, in response to Governor Abbott's declaration on March 13, 2020, the TDCJ announced publicly that it was suspending in-person visitation. To the extent that the order ending in-person visitation also suspended entry into TDCJ units by individuals who provide programming (such as teachers or counselors) it would be covered by this request. Any other order concerning access to TDCJ units by individuals who provide programming would likewise be included in this request.
  - c. **Any order regarding transfers between TDCJ facilities.** This request covers any order in which transfers between TDCJ facilities were suspended, and any order ending or modifying that suspension. The April 11, 2020 order suspending intakes from county jails, and the June 2020 order suspending that order are **not** subject to this request. This request only covers orders regarding transfers between facilities that are all operated by TDCJ.
  - d. **Any order regarding modifying the manner in which programs are conducted in TDCJ facilities.** This request covers any order permitting or requiring any TDCJ facility to alter the manner in which it conducts programming. For example, there have been public reports that during 2020, some programs were conducted solely by written work, [without in-person instruction](#). Any order mandating or permitting this change would be covered by this request. Additionally, any order mandating or permitting a change in the number of hours of in-person instruction required for any particular program, or the number of participants allowed in any program at any time, would be covered by this request.
- 4) **Any communication with vendors who provide programming in TDCJ units regarding any change in the manner in which programming is to be conducted.**

As always, I am available to discuss this request or to clarify any request within it by phone at 212-739-7605 or by email at [acase@latinojustice.org](mailto:acase@latinojustice.org).

Thank you for your time and attention to this matter.



Andrew Case

# **Exhibit 18**

## Andrew Case

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**From:** William Overton <William.Overton@tdcj.texas.gov>  
**Sent:** Thursday, March 25, 2021 8:59 PM  
**To:** Andrew Case  
**Cc:** OGC Open Records  
**Subject:** Public Information Request

Mr. Case,

We have received your public information request dated March 12, 2021. We believe there are issues with your request.

**Issue 1:**

Please clarify the specific information you are requesting in Item 3A, as written, we believe the request may identify probation information but your request is directed towards TDCJ information in general.

**You have 61 days to respond to this letter and provide a better understanding, in writing, of your request. If no response is received within the 61 days, your case will be closed and your request considered withdrawn. Texas Government Code § 552.222.**

**Issue 2:**

Items 3 and 4 include responsive information which is currently subject to litigation. We have successfully withheld such information. Please advise whether you would like to withdraw these requests, narrow these requests to limit them to nonconfidential information, or submit the matter to the Attorney General for an decision of whether we may release the information.

Regards,

William Overton  
Assistant General Counsel  
Texas Department of Criminal Justice  
P: (936) 437-6787  
F: (936) 437-6994

The information contained in this email and any attachments is intended for the exclusive use of the addressee(s) and may contain confidential, privileged, or proprietary information. Any other use of these materials is strictly prohibited. This email shall not be forwarded outside the Texas Department of Criminal Justice, Office of the General Counsel, without the permission of the original sender. If you have received this material in error, please notify me immediately by telephone and destroy all electronic, paper, or other versions.

## Andrew Case

---

**From:** Andrew Case  
**Sent:** Wednesday, April 28, 2021 4:02 PM  
**To:** William Overton; PIA@tdcj.texas.gov  
**Cc:** OGC Open Records  
**Subject:** Public Information Request  
**Attachments:** 2021-03-15 Public Information Request TDCJ.pdf; Public Information Request

Dear Bill, OGC, and PIA,

I am writing regarding the attached March 15, 2021 Public Information Request, and your response on March 25 (attached). (Note that in your response you addressed a March 12, 2021 request that I had inadvertently sent directly to you instead of the PIA address; I agree that March 15 is the correct submission date).

I understand you will be asserting a litigation exception to Requests 3 and 4. To facilitate matters, I hereby **Withdraw** Request 1 and Request 2 from the March 15, 2021 request. You therefore may proceed to brief the AG's office on the litigation exception to Request number 3 and number 4.

By this email, I am submitting the requests that were Request 1 and Request 2 in the March 15, 2021 letter. Note that I do not seek any information "about an inmate" and to the extent any such information is in the responsive documents you may redact it.

The request I am submitting today therefore is for:

- 1) Texas Government Code Chapter 501.103 Reentry and Parole Referral Reports for 2017, 2018, and 2019. The TDCJ website contains links for the report required by Tex. Gov. Code § 501.103 for 2015, 2016, and 2020. We request the reports for 2017, 2018, or 2019. If these are posted somewhere on the TDCJ website, a direction to the links will suffice as a response.
- 2) Texas Government Code Chapter 501.092 Comprehensive Reintegration Plan for Offenders, including subsequent revisions and evaluations. We request the TDCJ Comprehensive Reintegration Plan for Offenders. Note that we are not requesting any individual treatment plan created pursuant to Section 508.152, nor any information regarding any particular inmate at all. This request entails specifically the following documents:
  - a. The first Comprehensive Reintegration Plan created after Section 501.092 became law.
  - b. Each update to the Comprehensive Reintegration Plan that has been made as required by Section 501.092(d).
  - c. Each bi-annual report setting forth the results of the required evaluation conducted pursuant to Section 501.092(b)(7) as required by Section 501.091(i). To the extent that such a report includes information "about an inmate" as set forth in Texas Gov. Code § 552.134(a), we request a version of that report with all redactions necessary to remove inmate-related information. We note that statistical information is precluded from this exception pursuant to Texas Gov. Code § 552.134(b)(1).

As always I am available by phone or email to answer any questions.

Thank you,

Andrew



# **Exhibit 19**



# Texas Department of Criminal Justice

Bryan Collier  
Executive Director

May 19, 2021

The Honorable Ken Paxton  
Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, TX 78711-2548

RE: Public Information Request Submitted by Andrew Case – OGC#MW0100

Dear Mr. Attorney General:

On March 15, 2021, the Texas Department of Criminal Justice (TDCJ) received a request under the Public Information Act (PIA) from Andrew Case. The TDCJ submitted a copy of the request and a Request for Decision to your office on May 12, 2021.

After seeking clarification from Andrew Case the TDCJ received a response on April 28, 2021, changing the deadline for this brief to May 19, 2021.

The responsive records contain information that is excepted from disclosure under § 552.103, 552.111, and 552.134 of the PIA.

To calculate the timeliness of this brief, please note that the TDCJ functioned with a skeleton crew on April 21, 2021, in observance of the San Jacinto Day holiday.

## I.

Requestor, Andrew Case, is seeking various records regarding Reentry and Parole Referral Reports, Comprehensive Reintegration Plan, Administration of Programs and communication with vendors.

The responsive information that is excepted from required disclosure is attached.

Because the responsive records are voluminous and repetitive, the submitted material is a representative sample, as provided by section 552.301(e)(1)(D) of the PIA.

## II.

### **Section 552.103, Exception: Litigation or Settlement Negotiations Involving the State or a Political Subdivision**

Texas Government Code, Section 552.103(a) and (c) state in relevant part that

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*Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.*

**Office of the General Counsel**

**Kristen Worman, General Counsel – [Kristen.Worman@tdcj.texas.gov](mailto:Kristen.Worman@tdcj.texas.gov)**

P.O. Box 13084 Capitol Station  
Austin, Texas 78711-3084  
Phone (512) 463-9899, FAX (512) 936-2159

P.O. Box 4004  
Huntsville, Texas 77342-4004  
Phone (936) 437-6700, FAX (936) 437-6994

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- (a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
- (b) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under subsection (a) only if litigation is pending or reasonably anticipated on the date the requestor applies to the officer for public information for access to or duplication of the information.

Section 552.103 was intended to prevent the use of the *Public Information Act* as a means for avoiding the rules of discovery used in litigation (JM-1048, 1989). The exception enables the governmental body to protect its position in litigation by forcing parties to acquire information relating to that litigation through discovery procedures (ORD No. 551, 1990). As was noted in *Heard v. Houston Post Co.*, 684 S.W. 2d 210 (Tex. App.-Houston [1<sup>st</sup> Dist.] 1984 ref'd n.r.e.), this section of the Public Information Act excepts information from disclosure if (1) litigation involving the governmental body is pending or reasonably anticipated and (2) the requested information relates to that litigation.

Here, both elements are met. There is pending litigation and anticipated litigation against the TDCJ, and the requested information relates to that litigation.

First, there is pending and anticipated litigation. Two inmates filed a class action lawsuit in the United States Southern District of Texas in 2020 against the TDCJ and employees in their official capacities.<sup>1</sup> The case is captioned *Valentine v. Collier*, Docket No. 4:20-cv-01115. The case is currently open and pending.<sup>2</sup> The TDCJ is also involved<sup>3</sup> and expects to be involved in several other cases involving similar subject matter and has already taken steps in anticipation of the litigation, including issuing a notice to retain records relating to that potential litigation.<sup>4</sup>

Further, the TDCJ reasonably anticipates that employees who have contracted COVID-19 may sue the TDCJ for reasons similar to those in *Valentine*.<sup>5</sup>

Second, the requested information relates to the litigation and the anticipated litigation. The primary allegation in *Valentine* is that the TDCJ is deliberately indifferent in its response to the COVID-19 pandemic and is putting individuals at risk of contracting COVID-19. Additionally, the plaintiff has sought injunctive relief that would require the TDCJ to comply with specific measures, including distribution and use of personal protective equipment, that exceed those

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<sup>1</sup> Note that some of the class members are identical to the plaintiffs in another class action lawsuit, *Cole v. Collier*, that is currently pending. See OR2019-33849.

<sup>2</sup> A copy of the complaint is included with our brief in Exhibit A.

<sup>3</sup> *Blakely v. Baten ISF/Jordan Unit*, Docket No. 2:20-CV-00097 (N.D. Tex. April 17, 2020); *Wolfford v. Baten ISF/Jordan Unit*, Docket No. 2-20-CV-00094 (N.D. Tex. April 16, 2020); *Lee v. Muniz*, Docket No. 9:20-CV-00075 (E.D. Tex. April 17, 2020).

<sup>4</sup> See Exhibits B and C.

<sup>5</sup> See Exhibit D. CoreCivic contracts with the TDCJ to run certain private prison facilities.

recommended by the CDC. At the heart of the litigation are (1) the TDCJ's response to COVID-19; (2) whether the TDCJ is ignoring concerns presented by offenders and their family members; and (3) whether TDCJ officials are deliberately indifferent to protecting individuals from COVID-19. A fundamental aspect of the TDCJ's position in *Valentine* is that the TDCJ must have discretion to decide when and where its resources are allocated. The behind-the-scenes decision-making of what the TDCJ does and why the TDCJ does it is the focal point in the deliberate indifference analysis.

This applies to the anticipated litigation as well. Section 552.103(a) states that the information may be excepted if a state employee may be a party to anticipated litigation as a consequence of his or her employment. At the heart of the anticipated litigation in *Arnold* (see Exhibit D) is that the employer prison failed to maintain a safe work environment.

Here, all of the responsive information is directly tied to COVID-19. The requestor only wants information relating to the coronavirus for a very specific date range. This type of information is precisely the type of information that is at issue in the *Valentine* litigation. Disclosing such records through the Public Information Act could undermine the TDCJ's legal position in *Valentine* and other cases. Further, any information subject to discovery in the *Valentine* lawsuit is subject to a protective order and will not be releasable once the litigation is no longer pending.

Therefore, both elements are met. There is pending and anticipated litigation, and the requested information relates to that litigation. Disclosing such information in response to a public information request may undermine a current or future litigation strategy and circumvent discovery procedures. The information may be withheld under § 552.103.

### III.

#### **Section 552.111: Agency Memoranda**

Texas Government Code § 552.111 excepts from public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency....

The section has been interpreted to protect from disclosure intraagency and interagency communications containing advice, opinion, or recommendations on policymaking matters of the government body. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 261, 264 (Tex. 2000). The purpose is "to encourage frank and open discussion within the agency in connection with its decision-making processes" pertaining to policy matters. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e). Included in an agency's policymaking function are administrative and personnel matters of broad scope that affect the government body's policy mission.

Here, the responsive material consists of communications between TDCJ officials discussing the operations and actions related to responding to the COVID-19 virus. The purpose of these communications is to keep decision makers aligned when carrying out the TDCJ's policy mission in responding to a global pandemic. In an agency as large as the TDCJ, the coordination

of a unified response to potential problems with staff is essential. The responsive information is not merely factual information; rather, the emails are TDCJ officials advising other relevant decisionmakers about issues that are of particular importance to the TDCJ's pandemic response. Stated differently, this is how our administrative leadership expresses its opinion as how internally respond to an emergency situation. Therefore, the responsive information here extends to the level of "advice, opinion or recommendation on policymaking matters" of the TDCJ. The disclosure of this information would discourage "frank and open discussion within the agency" and should be withheld under § 552.111.

#### IV.

For the foregoing reasons, the TDCJ asserts the requested records should not be available to this requestor or to any other member of the public.

Sincerely,



William Overton  
Assistant General Counsel

cc: Andrew Case  
acase@latinojustice.org

WPO/mcw  
Attachment

The TDCJ requests that you send your ruling to:

Texas Department of Criminal Justice  
Office of the General Counsel  
ATTN: William Overton, Assistant General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

# **Exhibit 20**



June 25, 2021

Honorable Ken Paxton  
Office of the Attorney General  
Open Records Division  
PO Box 12548  
Austin, TX 78711-2548

RE: Public Information Request – OGC#MW0100

Dear Mr. Attorney General,

I am writing in response to the May 19, 2021 brief submitted to your office by the Office of the General Counsel for the Texas Department of Criminal Justice (“OGC”) regarding the above-referenced Public Information request.

On March 15, 2021, LatinoJustice submitted a public information request to the Texas Department of Criminal Justice (“TDCJ”), attached hereto as **Exhibit A**. In response to a request from TDCJ, LatinoJustice limited the request on April 28, 2021 to the following:

- 1) Any TDCJ Order Relating to the Administration of Programs in TDCJ Facilities Since March 1, 2020. This request includes, but is not limited to:
  - a. Any order reducing the number of available beds in a facility in which TDCJ offers programming.
  - b. Any order limiting access to TDCJ facilities by individuals who conduct programming in those facilities.
  - c. Any order regarding transfers between TDCJ facilities.
  - d. Any order regarding modifying the manner in which programs are conducted in TDCJ facilities.
- 2) Any communication with vendors who provide programming in TDCJ units regarding any change in the manner in which programming is to be conducted.

On May 19, 2021, OGC submitted a brief to your office claiming that the responsive material in TDCJ’s possession is exempt from disclosure under § 552.103, 552.111, and 552.134 of the Texas Public Information Act (“PIA”). For the reasons stated below, these exceptions do not apply and the material should be produced.

**I. There is No “Pending or Reasonably Anticipated” Litigation**

TDCJ invokes the litigation exception, but this exception only applies to “pending or reasonably anticipated” litigation. TDCJ cites a number of cases that it claims the information relates to, but all but one of these cases are concluded. For example, TDCJ relies heavily on *Valentine v. Collier*, 20-cv-1115. The Fifth Circuit’s order rendering judgment for Defendants was entered on the district court docket in *Valentine* on April 19, 2021 (Doc. 492). All but one of the remaining cases cited by TDCJ were all resolved in 2020. See *Blakely v. Baten ISF/Jordan Unit*, 20-cv-00097 (N.D. Tex. July 6, 2020) (Doc. 14); *Wolfford v. Baten ISF/Jordan Unit*, 20-cv-00094 (N.D. Tex. June 6, 2020) (Doc. 13); *Lee v. Muniz*, 20-cv-0007 (E.D. Tex. June 12, 2020) (Doc. 10).



The only open case cited by TDCJ is *Cole et al v. Collier*, 14-cv-1698, a seven-year-old class action involving the conditions at a single TDCJ unit regarding health and safety. LatinoJustice's request seeks information about programming administered by TDCJ's Rehabilitation Programs Division ("RPD"). TDCJ provides no explanation as to why a request for documents relating to system-wide program administration is related to *Cole*, and no explanation as to why cases that had been closed for months when LatinoJustice filed its request can be considered "pending."

Rather, TDCJ appears to claim that it anticipates litigation because LatinoJustice may use the information that it is seeking to bring litigation. But this is insufficient to invoke the exemption. As your office argued in *Paxton v. City of San Antonio*, No.-D-1-GN-19-003072 (Travis Cty. June 3, 2019), under such a theory, the "public would be precluded from *ever* receiving information about a topic under investigation via a public information request." The petition in *San Antonio* is attached hereto as **Exhibit B**.

## **II. The Agency Memoranda Exception Does not Apply to Orders and Directives**

The TDCJ seeks to invoke the agency memoranda exception, § 552.111, by mischaracterizing LatinoJustice's request. This incorporates the deliberative process and work product privileges. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (2000). But LatinoJustice is seeking orders issued by TDCJ governing the operation of its Rehabilitation Programs Division. Because LatinoJustice does not seek predecisional documents or advice circulated within TDCJ, but directives setting agency policy, this exception does not apply.

## **III. TDCJ Does Not State Why the Documents are Exempt under § 552.134**

TDCJ claims that the requested documents are exempt under § 552.134, which exempts information "about an inmate." TDCJ does not state why this exemption applies, and LatinoJustice has not requested any information about any particular inmate. Instead it has requested information about the operation of TDCJ as a whole. To the extent that information about an inmate is included in any responsive document, it may be redacted.

For the above-stated reasons, the information sought must be provided under the PIA.

Sincerely,



Andrew Case  
Senior Counsel  
LatinoJustice PRLDEF



# **Exhibit 21**



April 1, 2021

Texas Department of Criminal Justice  
Office of the General Counsel  
PO Box 4004  
Huntsville, TX 77342

**Re: Request Under Texas Public Information Act for Program Materials**

**Via Email: [PIA@tdcj.texas.gov](mailto:PIA@tdcj.texas.gov)**

Dear Madam or Sir,

I am writing to make a request of the Texas Department of Criminal Justice (“TDCJ”) pursuant to the Texas Public Information Act, Gov’t Code § 552.001 (the “Act”). I can accept the requested documents in digital format. They may be emailed to me as an attachment or delivered through an FTP/FTA system at the email address [acase@latinojustice.org](mailto:acase@latinojustice.org).

### **Documents Requested**

- 1) **Blank versions of any forms, documents, or evaluation metrics used to determine which individuals participating in the Pre-Release Therapeutic Community (“PRTC”) in the Hamilton Unit were “chemically dependent” and which were not “chemically dependent” as of August 2020, as those forms were provided to any staff member making such a determination.** This request seeks only the *blank* forms or *instructions to staff* as to how to make this determination. We do not seek any information that was completed with regard to any program participant, nor do we seek any information about whether any program participant was designated as “chemically dependent” or not “chemically dependent.” We request only one (1) copy of each unique form used for this purpose.
- 2) **Blank versions of any forms or documents that participants in the Pre-Release Therapeutic Community (“PRTC”) in the Hamilton Unit from August 2020 through the present were asked to complete to document the number of hours of direct programming they received and the number of hours of indirect programming they received.** This request seeks only a single copy of each unique version of a *blank* form provided to program participants that program participants subsequently filled out. We do not seek any completed version of any form, or any information from which an individual program participant could be identified.
- 3) **Blank versions of any assignments that were provided to participants in the Pre-Release Therapeutic Community (“PRTC”) in the Hamilton Unit from August 2020 through the present that program participants were asked to complete as a substantive part of the PRTC program.** This request seeks only a single copy of each unique version of a *blank* worksheet, workbook, or assignment provided to program participants during the relevant period. We do not seek any completed version of any workbook or worksheet, or any information from which an individual program participant could be identified.



LATINOJUSTICE PRLDEF 475 Riverside Drive, Suite 1901, New York, NY 10115 | D: 212.219.3360 | G: 800.328.2322

New York, NY | Orlando, FL | Central Islip, NY | Austin, TX  
[latinojustice.org](http://latinojustice.org)

As always, I am available to discuss this request or to clarify any request within it by phone at 212-739-7605 or by email at [acase@latinojustice.org](mailto:acase@latinojustice.org).

Thank you for your time and attention to this matter.

A handwritten signature in black ink, appearing to read 'Andrew Case', with a stylized, cursive script.

Andrew Case

# **Exhibit 22**

## Andrew Case

---

**From:** OGC Open Records <ogcopenrecords@tdcj.texas.gov>  
**Sent:** Thursday, April 15, 2021 5:13 PM  
**To:** Andrew Case  
**Subject:** PIR - Andrew Case  
**Attachments:** PIR - Andrew Case.pdf; Initial Screening.PDF; DSM Criteria.PDF; Addiction Severity Index.PDF

Mr. Case,

Attached please find the information responsive to your request dated April 1, 2021.

Items #2 & 3 are copyrighted workbooks, "Living in Balance" and "New Directions Criminal and Addictive Thinking" by Hazleden Publishing. You have the right to request to view these items in person. If you choose to do so, please contact our office for assistance.

We now consider your request closed.

Thank you,

Office of the General Counsel-TDCJ

P: (936) 437-6700

The information contained in this email and any attachments is intended for the exclusive use of the addressee(s) and may contain confidential, privileged, or proprietary information. Any other use of these materials is strictly prohibited. This email shall not be forwarded outside the Texas Department of Criminal Justice, Office of the General Counsel, without the permission of the original sender. If you have received this material in error, please notify me immediately by telephone and destroy all electronic, paper, or other versions.

# **Exhibit 23**

## Andrew Case

---

**From:** Andrew Case  
**Sent:** Wednesday, April 28, 2021 3:55 PM  
**To:** William Overton  
**Cc:** PIA@tdcj.texas.gov  
**Subject:** Follow up on April 1, 2021 Public Records Request  
**Attachments:** 2021-04-01 Public Information Request TDCJ.pdf

Bill,

Thank you for speaking with me just now. I am following up on the attached PIR from April 1. As discussed, I received a response (below) that provided documents in response to Request #1 and directed me to the commercially-available material in response to Request #3.

I am writing to re-submit Request #2, which does not include the commercial material but which asked for timesheets filled out by inmates completing the programs. You mentioned on the phone that only completed timesheets were available, but that blank timesheets had been damaged in a water leak.

I am writing to confirm that **I will accept redacted or whited-out versions of the timesheets** so that if you have timesheets that are filled out and you then redact them, that would satisfy the request.

I am pasting the request below and copying the PIA address in case this is interpreted as a new request.

2) Blank versions of any forms or documents that participants in the Pre-Release Therapeutic Community (“PRTC”) in the Hamilton Unit from August 2020 through the present were asked to complete to document the number of hours of direct programming they received and the number of hours of indirect programming they received. This request seeks only a single copy of each unique version of a blank form provided to program participants that program participants subsequently filled out. We do not seek any completed version of any form, or any information from which an individual program participant could be identified.

Thank you,

Andrew

---

**From:** OGC Open Records <ogcopenrecords@tdcj.texas.gov>  
**Sent:** Thursday, April 15, 2021 5:13 PM  
**To:** Andrew Case <acase@latinojustice.org>  
**Subject:** PIR - Andrew Case

Mr. Case,

Attached please find the information responsive to your request dated April 1, 2021.

Items #2 & 3 are copyrighted workbooks, “Living in Balance” and “New Directions Criminal and Addictive Thinking” by Hazleden Publishing. You have the right to request to view these items in person. If you choose to do so, please contact our office for assistance.

We now consider your request closed.

Thank you,

Office of the General Counsel-TDCJ

P: (936) 437-6700

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# **Exhibit 24**



April 2, 2021

Texas Department of Criminal Justice  
Office of the General Counsel  
PO Box 4004  
Huntsville, TX 77342

**Re: Request Under Texas Public Information Act for Program Materials**

**Via Email:** [PIA@tdcj.texas.gov](mailto:PIA@tdcj.texas.gov)

Dear Madam or Sir,

I am writing to make a request of the Texas Department of Criminal Justice (“TDCJ”) pursuant to the Texas Public Information Act, Gov’t Code § 552.001 (the “Act”). I can accept the requested documents in digital format. They may be emailed to me as an attachment or delivered through an FTP/FTA system at the email address [acase@latinojustice.org](mailto:acase@latinojustice.org).

**Documents Requested**

- 1) **Posted schedules for counselors who conducted sessions for the Pre-Release Therapeutic Community (“PRTC”) in the Dorm B1 of the Hamilton Unit from August 1, 2020 through January 1, 2021.** The schedules were posted in the day room of Dorm B1 on a weekly basis during this period.
- 2) **Documents recording the actual time that counselors conducting sessions for the Pre-Release Therapeutic Community (“PRTC”) in the Hamilton Unit from August 1, 2020 through January 1, 2021 spent in the Unit.** This request includes documents in addition to the publicly-posted schedules, including timesheets submitted by the counselors themselves, records maintained by TDCJ regarding counsellors’ attendance, and any other documents recording the hours that counselors were actually present during the relevant period.
- 3) **Sample completed forms that were posted in Dorm B1 of the Hamilton Unit from August 1, 2020 through January 1, 2021 instructing program participants how to documenting the number of hours of direct programming and indirect programming program participants in Pre-Release Therapeutic Community (“PRTC”) in the on received.** These forms were posted in in the day room of Dorm B1.

As always, I am available to discuss this request or to clarify any request within it by phone at 212-739-7605 or by email at [acase@latinojustice.org](mailto:acase@latinojustice.org).

Thank you for your time and attention to this matter.

A handwritten signature in black ink, appearing to read "Andrew Case".

Andrew Case



**LATINOJUSTICE PRLDEF** 475 Riverside Drive, Suite 1901, New York, NY 10115 | D: 212.219.3360 | G:  
800.328.2322

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