



Texas Board of Criminal Justice
Director, Office of the Ombudsman
P.O. Box 99
Huntsville, Texas 77342-0099

April 20, 2022

re: manipulation of report of abuse by TBCJ Office of the Ombudsman;
manipulation of report of abuse by TBCJ PREA Ombudsman Office;
failure to properly, thoroughly, or appropriately investigate a report of abuse;
pattern of manipulation in order to dismiss investigations and abuses by TBCJ/TDCJ

To the Texas Board of Criminal Justice Ombudsman Director:

I am writing related to a prior complaint by Trans Pride Initiative (TPI) on behalf of a transgender woman, Ms. [REDACTED], Texas Department of Criminal Justice (TDCJ) number [REDACTED], currently incarcerated at the Clements Unit.

On March 1, 2022, TPI submitted a report of staff abuse to the Texas Board of Criminal Justice (TBCJ) Office of the Ombudsman with the subject “unauthorized and abusive body cavity search, [REDACTED], TDCJ # [REDACTED].”

To date, no response has been received by TPI from the Office of the Ombudsman. Instead, we received a letter from the TBCJ PREA Ombudsman Office dated March 14, 2022, concerning an alleged sexual assault incident SA-202100488-00005, signed by Teresa Gardner, Manager I, PREA Ombudsman Office. This means that to date, no response has been made to the report of staff misconduct—which was the actual complaint submitted—nor has there been any response to the fact that Ms. [REDACTED] has and continues to experience endangerment from the persons who she alleges conducted the unauthorized body cavity search. Even if the allegations of an inappropriate body search are unsubstantiated, this is ignoring the high likelihood of retaliation from staff accused of such misconduct.

The Current Issue

The lack of response by the TBCJ Office of the Ombudsman represents a deliberate and intentional misrepresentation of our complaint for the purpose of dismissing our concerns, a misrepresentation in which the TBCJ PREA Ombudsman Office is also complicit by their participation in the manipulative effort. This response and the manipulation of our report



documents a failure by TBCJ/TDCJ to investigate staff misconduct properly, thoroughly, or appropriately. This response is also part of a pattern of abusive investigative practices by TBCJ/TDCJ regarding staff misconduct and abuse.

The TPI report of staff misconduct documented that on December 8, 2021, Ms. [REDACTED] reported she experienced a mental health crisis and was escorted to medical for clearance prior to placement in a crisis management cell. Ms. [REDACTED] further reports that after being seen by medical staff, she was escorted to that cell in a wheelchair at about 5am by a Sergeant [REDACTED], Corrections Officer [REDACTED] [REDACTED], and another corrections officer whose name is not known. Ms. [REDACTED] reports she was carried into the cell while still in hand restraints, laid on the bed, and her boxer shorts were removed.

At that point, Ms. [REDACTED] reports that Mr. [REDACTED] requested permission to conduct a cavity search. Mr. [REDACTED] is reported by Ms. [REDACTED] to have responded "as long as it stayed between the three of them," after which Mr. [REDACTED] inserted a gloved finger into her rectum. Ms. [REDACTED] reports she was then threatened with additional physical assault if she got up off the bed.

If there were an indication of contraband requiring a body cavity search, policy dictates that such search is to be performed by medical staff, and in this case that should have been done during the exam prior to escort to the crisis cell. A cavity search performed in the cell, as reported by Ms. [REDACTED], would not only be a violation of policy, but gross mistreatment of a prisoner.

TDCJ policy AD-03-22 sets out the procedures for body cavity searches:

III. Body Cavity Searches and Dry Cell Isolation

When reasonable suspicion exists to believe an offender ingested or inserted contraband into a body cavity, and therefore visual, pat, and strip searches are insufficient to detect the contraband, the offender shall be subject to dry cell isolation.

A. Reasonable suspicion may be established by any of the following:

1. Confidential information from a reliable source;
2. Irregularities possibly indicating the presence of contraband in the pelvic or rectal area during a strip search;
3. Detection of contraband on the offender's visitor after physical contact with the offender;
4. Detection of contraband on the offender after physical contact with a visitor; or
5. Any other objective evidence indicating the offender has contraband concealed in a body cavity.

B. Once reasonable suspicion has been established, a security supervisor shall obtain authorization from the warden or designee to escort the offender to the medical department.

1. Visual body cavity searches shall be performed by medical practitioners.
2. A medical practitioner shall attempt to determine, through a complete physical examination, if the offender has ingested or concealed contraband in the offender's body. If contraband is verified, the following steps shall be taken:



- a. The offender shall be provided an opportunity to voluntarily surrender the concealed contraband; or
 - b. If the offender refuses to surrender the contraband voluntarily, medical staff shall determine whether the contraband can be eliminated through the natural waste process, and if so, the offender shall be isolated in a dry cell in accordance with SM-03.04, "Dry Cell Isolation Procedures."
3. If the medical practitioner determines that elimination of contraband through the natural waste process in a dry cell is not possible, and failure to remove the contraband presents an imminent danger to the life of the offender, medical staff shall initiate removal of the contraband by the most appropriate method, as determined by the medical practitioner.
- C. A body cavity search or contraband removal shall be considered a serious incident, shall be reported in accordance with AD-02.15, "Operations of the Emergency Action Center and Reporting Procedures for Serious or Unusual Incidents," and shall be fully documented, including the participants, reasonable suspicion, and results.

Even if reasonable suspicion of contraband had been established, which between medical and the crisis cell appears not to have been done; and even if authorization from the warden or designee had been obtained, again unlikely between medical and the crisis cell; certainly this body cavity search was not conducted by medical staff, and it would have been redundant to any body cavity search that had been properly conducted by medical staff just minutes before.

TPI did not report this as sexual abuse because we have seen many times that **actions that are potentially staff sexual harassment or sexual abuse will be dismissed if any claim can be made that the abuse was performed during job duties.**¹ In addition, it is not uncommon for such allegations to be declared "unfounded," or for the victim to then be written a disciplinary case for lying to harm staff. We suspect that Department of Justice comments regarding PREA implementation² are being misused in order to disregard abuses conducted during "official duties":

With regard to abuse by staff, [the definition of sexual abuse of a prisoner is limited to] "official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire." Thus, if the touching is unrelated to official duties, no finding as to intent is necessary. If the touching is related to official duties—such as a strip search—the touching qualifies as sexual abuse only if it is performed in a manner that evidences an intent to abuse, arouse, or gratify sexual desire.

This allows an alleged abuse, if performed while on the job, to be dismissed by simply asking if the accused staff person "intended" to abuse, and of course that response will be no.

In this case, Teresa Gardner of the PREA Ombudsman Office did not even investigate but simply "interviewed [the staff, who] denied all allegations." This is an egregious dereliction of

1. TPI believes such automatic dismissals are clearly not compliant with PREA standards. However, our experience shows TDCJ will use such proper and good-faith allegations for retaliation by citing claims of sexual misconduct as lying during an investigation for the purpose of issuing retaliatory disciplinary cases. For the safety of our correspondents, we choose to increase their chances of survival by specifically excluding claims of sexual misconduct and requesting investigation as staff misconduct.

2. National Standards To Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37,116 (June 20, 2012).



duty by Ms. Gardner, especially because our report included the report from Ms. [REDACTED] that the staff involved had agreed that the improper cavity search would be allowed “as long as it stayed between the three of them,” which indicates a clear and obvious intent to deny any allegation of abuse.

In this way, the TBCJ Office of the Ombudsman has dismissed possible staff misconduct by misrepresenting our report of an improper body cavity search as a report of sexual assault, and the TBCJ PREA Ombudsman Office participated in the misrepresentation by agreeing to that misrepresentation. This manipulation of our report provided TBCJ/TDCJ with the means of dismissal by claiming an allegation of sexual abuse was performed during a job duty, thus “intent” had to be proved. The TBCJ PREA Ombudsman Office then conducted an “investigation” that improperly and unprofessionally relied on asking staff who had reportedly stated they would deny the incident by simply asking the accused staff if they denied the incident.

In this way, the Office of the Ombudsman eliminates data concerning staff misconduct by misrepresenting it as sexual assault, and the PREA Ombudsman Office eliminates data concerning sexual abuse because the DoJ condition for job-related sexual abuse allows such elimination.

Thus, the handling of the report of an abusive body cavity search constitutes manipulation of a report of abuse by TBCJ Office of the Ombudsman, manipulation of report of abuse by TBCJ PREA Ombudsman Office, and failure to properly, thoroughly, or appropriately investigate a report of abuse.

A Pattern of Manipulation

This type of response is by no means isolated; instead, it is common TDCJ practice. The following table provides a sample of various means TBCJ/TDCJ manipulates both our reports and the reports of incarcerated persons to manipulate investigations, deny violence, and obfuscate misconduct. It is quite common for TBCJ/TDCJ to allege a complaint about staff misconduct or abusive treatment concerned sexual misconduct when the agency knows the allegation does not meet the definition of sexual abuse or sexual harassment as a means of dismissing the complaint. However, this is not the only way TBCJ/TDCJ manipulates reports of violence. It should be noted that the following are only a sample of our documented abuses.

TPI Incident		
Number	Date	Notes
Manipulating outside reports of violence		
2018-00136	Aug 2, 2018	TDCJ denied a rape and claimed that the incident, where a guard abetted the rape, was a “procedural error.”
2018-00321	Sep 11, 2018	TDCJ claimed evidence turned in to staff concerning endangerment was “no



TPI Incident Number	Date	Notes
		evidence" of endangerment.
2018-00821	May 9, 2018	Claimed TPI alleged sexual abuse when we did not. In fact, our complaint specifically stated this was not a report of sexual abuse.
2018-00895	Oct 9, 2018	TDCJ replied to TPI's report of extortion that the subject was in trouble for "complying with directions issued by the group," which appears to be admitting extortion but refusing to recognize it.
2019-00102	Jan 22, 2019	TDCJ manipulated multiple claims of physical assault were claims of sexual harassment or sexual assault and found them unsubstantiated.
2019-00109	Feb 21, 2019	TDCJ considered a family report of sexual harassment to be sexual assault and found sexual assault unsubstantiated.
2019-00118	Mar 28, 2019	TDCJ misrepresented TPI's report of inappropriate search practices as sexual abuse and unsubstantiated the report.
2020-00074	Jan 11, 2020	TDCJ stated in response to an improper disciplinary case that it was proper, but the case was overturned, indicating TDCJ did not actually investigate the issue.
2020-00272	May 14, 2020	In response to a complaint about Covid-19 and overcrowding a day room, TDCJ stated that visitation had been canceled so the day room could not be overcrowded. The day room has nothing to do with visitation.
2020-00385	Jun 2, 2020	TDCJ misrepresented TPI's report of threats and physical assaults as sexual harassment to unsubstantiate the report.
2020-00462 2020-00463	Jun 1, 2020	TDCJ claimed TPI's complaint about inappropriate food service is a health issue so healthcare can state the food need is in the medical record, dismissing the actual problem with inappropriate behavior by food service staff.
2020-00711	Sep 3, 2020	TDCJ claimed that there was no indication that a medical provider treated an incarcerated person to dismiss our complaint that the medical provider refused to treat the person.
2020-01047	Dec 22, 2020	The TDCJ Office of the Inspector General ignored our report of staff misconduct, staff abuse, and tampering with evidence (possible violation of state law) to only address a use of force incident and declare the use of force incident was outside OIG jurisdiction.
2021-00399	Oct 20, 2021	TDCJ claimed that reports of an incarcerated person being inappropriately logged as "no show" for healthcare appointments by stating the person "did not attend" when the complaint was about repeated failures to provide transportation.
2021-00516 2021-00517	Dec 8, 2021	After multiple attempts to address harassment and threats of harm with no response from staff in charge, an incarcerated person traded sex for protection. The same staff then gave the incarcerated person a consensual sex case to cover up their failures to address the threats. Due to the extreme difference in power and status of all parties involved, it would not be possible for the victim to actually consent, but this more appropriately constituted sexual abuse with the complicity of TDCJ staff.
2022-00022	Jan 13, 2022	After TPI filed a complaint about staff mistreatment and sexual abuse (the staff person was terminated), TPI filed a subsequent complaint concerning subsequent



TPI Incident Number	Date	Notes
		retaliation and failure to protect the victim from retaliation. TDCJ refused to address this issue, claiming that they had already responded.
2022-00094 2022-00095	Mar 29, 2022	TDCJ refused to respond to a report of sexual harassment and claimed that the subject did not report a physical assault with serious injuries. TDCJ also vaguely claimed that medical staff “observed . . . bruising” and that “treatment was provided,” avoiding our report that his injuries were not treated until many days later. TDCJ also falsely stated to the victim that sexual harassment did not meet the definition of sexual harassment because it was not repeated, which is a manipulation of the intent of PREA § 115.6 definition.
Manipulating incarcerated persons to deny endangerment or to extort them for information		
2017-00190	Oct 12, 2017	TDCJ states that the subject had no safety concerns, although the subject reported many serious concerns.
2017-00336	Jun 30, 2017	On trying to report a rape, the subject was told that she was lying and seems to have been told to make a statement that it did not happen.
2017-00411	May 25, 2017	The subject reported endangerment to an investigator, who then asked if the subject was in danger at that moment (that is, in the room with the guards and investigator). She answered no (under threat of a disciplinary case for lying if she did not answer no), and that appears to have been used to deny endangerment by administration.
2017-00481	Aug 18, 2017	The subject notes filing an endangerment report against a staff person, and later that same staff person “interviewed” the subject and threatened physical harm unless the statement was retracted.
2019-00515	Jan 13, 2019	During investigation, TDCJ staff indicated they would address safety issues only if the subject provided information about contraband.
Other forms of manipulation		
2017-00257	Dec 19, 2017	The subject was given a case for a good faith report of sexual abuse.
2017-00282 2017-00283	Mar 2, 2017	A TDCJ investigator blamed the subject for sexual abuse against her, then gave her a disciplinary case for a good faith report of sexual abuse.
2017-00626	Jul 12, 2017	The subject was given a disciplinary case for making a good faith report of sexual harassment by a guard.
2018-00328	Jul 24, 2018	When trying to report endangerment, the subject was given a case for refusing housing.
2018-00712	May 15, 2018	The subject was given a case for lying for making a good faith report of sexual abuse.
2019-00202	Apr 23, 2019	The subject was given a disciplinary case for refusing an order because she would not return to a cell where she said her safety was in danger.
2019-00559	Oct 22, 2019	After stating that her cellmate had tried to kiss her and she pushed the cellmate away, the subject was given a case for sexual misconduct described as “kissing .
Trans Pride Initiative	P.O. Box 3982, Dallas, Texas 75208 214-449-1439	tpride.org



TPI Incident Number	Date	Notes
		. . for the purpose of sexual gratification.”
2019-00696	Dec 11, 2019	The subject reports that when they asked to be moved to a different area where they would not be around people trying to extort them, staff wrote them a disciplinary case for refusing housing.
2019-00708	May 25, 2019	TDCJ OIG staff investigating a sexual assault tried to get the victim to falsely state that she was to blame for the sexual assault against her.
2020-00020	Jan 17, 2020	The subject notes staff tried to move her into a cell with a person who had previously assaulted her, and when she let the guards know, one tried to force her in the cell under threat of a use of force, and another gave her a case for refusing housing.
2020-00974	Nov 6, 2020	The subject tried to report endangerment if she returned to her cell and was given a case for refusing housing.
2022-00071	Jan 23, 2022	After staff refused to address harassment and threats of physical harm, the subject provided sexual favors in exchange for protection. The power differential between the subject and other persons in the housing area indicate this could not have been consensual, but staff then gave the subject a case for consensual sex.

Other forms of manipulation include ignoring threats or reports of violence, which constitutes manipulation of either the report into a denial any report was made or allegations of lying. A list of some of the examples of this type of manipulation includes (descriptions of these incidents can be looked up at https://tpride.org/projects_prisondata/index.php):

- 2014-00040
- 2015-00054
- 2016-00234
- 2018-00160, 2018-0031, 2018-00317, and 2018-00318 (all related)
- 2018-00423
- 2018-00592 and 2018-00593
- 2018-00685 and 2018-00686
- 2018-00697
- 2018-00706
- 2019-00027, and 2019-00028, and 2019-00029
- 2019-00060
- 2019-00159
- 2019-00291
- 2019-00726
- 2020-00039
- 2020-00127
- 2020-00371
- 2020-00569
- 2020-00601
- 2020-00729
- 2020-01001
- 2021-00027 and 2021-00080
- 2021-00046

In addition, TPI filed 111 Covid-19 procedure complaint concerning 32 different units, and in nearly every case, TDCJ’s response was to simply refer to policy with no appropriate investigation of actual policy violations. This manipulation claims that policy is equivalent to practice, far from accurate in the TDCJ system, and a deliberate means of ignoring and perpetuating staff abuse and violence.



Together, these data show that TBCJ/TDCJ has a long-standing and pervasive habit of manipulating issues of violence, reports of violence, and of manipulating events and reports for the purpose of reducing data they would consider negative.

Request for Redress

We are requesting an immediate transfer of Ms. [REDACTED] from Clements Unit. Even if TBCJ/TDCJ continues to claim the allegations are unsubstantiated, the allegations put Ms. [REDACTED] at serious risk of retaliation from those named in her allegation. Ms. [REDACTED] requires immediate transfer for her safety.

We are requesting a thorough, proper, and appropriate investigation of the allegations of an improper body cavity search performed with Ms. [REDACTED] in violation of policy and her civil rights.

We are requesting the elimination of both the TBCJ Office of the Ombudsman and the TBCJ PREA Ombudsman Office and replacement with an actual outside investigative agency that is not beholden to TBCJ/TDCJ influence and funding.

We look forward to receiving communication from your office that this issue is being addressed in a manner that will move the agency closer to ending the TDCJ-sanctioned discrimination and abuse of transgender persons, which in addition to constituting violence in itself, encourages violence from TDCJ staff and other incarcerated persons and fails to meet PREA guidelines requiring zero tolerance of sexual abuse and sexual harassment.

Sincerely,

TPI Incident Number •2022-00118, Manipulation of report
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Nell Gaither, President
Pronouns: she/her/hers
Trans Pride Initiative

cc: Department of Justice Special Litigation Section
Lorena Steinbecker, TDCJ Safe Prisons Program Management Office