



Office of the Attorney General  
State of Texas

May 28, 1992

DAN MORALES  
ATTORNEY GENERAL

Ms. Rachael Martin  
Executive Director  
Board of Law Examiners  
P. O. Box 13486  
Austin, Texas 78711-3486

OR92-267

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the act), V.T.C.S. article 6252-17a. Your requests were assigned ID# 15316 and ID# 15246.

You have received three requests for information relating to the state bar examination. The first requestor (ID# 15316) seeks, among other information that you already have released to the requestor, the scores a certain attorney received on the state bar examinations that he took. The second requestor (ID# 15246) seeks copies of all records in your possession "concerning the past and present status of [a certain person who has applied, in the past, to take the state bar examination] and [the person's] eligibility to take the Texas bar examination." The third requestor (ID# 15246) seeks all information you may have regarding an applicant for admission to the Texas Bar, and specifically requests the applicant's current residential address and current work address. You ask whether all of the requested information is subject to the Open Records Act.<sup>1</sup>

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<sup>1</sup>In Open Records Decision No. 136 (1976) the attorney general determined that the board's entire file on an attorney, including the declaration of intention to study law, application to take the bar examination, all letters of recommendation, and any investigative reports, correspondence, and other documents or information in the file, was not subject to the act because the board held the documents on behalf of the Texas Supreme Court. Three years after that opinion was issued, the legislature amended V.T.C.S. article 304 (*see* Acts 1979, 66th Leg., ch. 594, § 1, at 1253), adding, among other provisions, subsection (f), which made the board generally subject to the open records and open meetings laws. The exceptions specified in article 304(f) are substantially the same as the exceptions in the codified version of article 304, § 82.003 of the Government Code. *See* Acts 1987, 70th Leg., ch. 148, § 3.01 at 593. The enactment of article 304(f), codified as Government Code section 82.003, supersedes Open Records Decision No. 136.

Chapter 82 of the Government Code creates and governs the Board of Law Examiners (the board). Section 82.003 governs the board's status as a governmental body subject to the act. That section states as follows:

- (a) Except as provided by Subsections (b) and (c), the Board of Law Examiners is subject to the open records law . . . , and the open meetings law . . . .
- (b) Examination questions that may be used in the future and examinations other than the one taken by the person requesting it are exempt from disclosure.
- (c) Deliberations relating to moral character and fitness of an applicant may be closed to the public, and records relating to these subjects are exempt from disclosure. On the written request of an applicant, however, the applicant is entitled to have disclosed to the applicant records relating to the applicant's own moral character and fitness unless the person who supplied the information has requested that it not be disclosed. The board shall not inquire of a person who supplies information whether the person objects to disclosure nor inform the person of the right to object.<sup>2</sup> (Footnote added.)

You inform us that, pursuant to the authority granted to it in section 82.022(b), the Texas Supreme Court issued an Order on July 7, 1987, designed to clarify the provisions of sections 82.003 and 82.029, which section provides for the confidentiality of criminal history record information the board receives during its investigation of an applicant's character and fitness to practice law (*see* footnote 1). In pertinent part, the order exempted from disclosure under the act the following information:

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<sup>2</sup>In addition, subsection 82.029(c) of the Government Code provides that all criminal history record information the board obtains "is privileged and confidential"; the board may not disclose criminal history record information "except on court order or consent of the applicant." Intentional or knowing release or disclosure of criminal history record information is a class B misdemeanor. Gov't Code § 82.029(d).

Examinations or parts thereof including:

....

- (d) Examinee's answers.

....

- (f) Grades and examination results of any person; except, the applicant may request his own grades, unless the applicant's grades are being withheld pending the resolution of an investigation into the applicant's moral character and fitness.

Moral character and fitness records and deliberations, including:

- (a) The Declaration of Intention to Study Law and Application for Admission, together with all attachments, except as provided in Rule XI of the Rules Governing Admission to the Bar of Texas.<sup>3</sup>
- (b) The materials resulting from the Texas Board of Law Examiners moral character and fitness investigation of each Declaration and Application, except as provided in Rule XI of the Rules Governing Admission to the Bar of Texas.
- (c) The deliberations and recommendations of any District Committee on Admissions, except as provided in Rule XI of the Rules Governing Admission to the Bar of Texas.

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<sup>3</sup>Under rule XI of the RULES GOVERNING ADMISSION TO THE BAR OF TEXAS, if upon the record before it the board is not satisfied that the applicant possesses the necessary good moral character and fitness, the board shall conduct a public hearing on the question of the applicant's moral character and fitness. The board may introduce any information it has received or generated relating to the applicant's moral character or fitness at such a hearing. See RULES GOVERNING ADMISSION TO THE BAR OF TEXAS XI (b).

- (d) Those portions of the Texas Board of Law Examiners Minutes relating to the Board's deliberations and decisions on individual cases relating to moral character and fitness, except as provided in Rule XI of the Rules Governing Admission to the Bar of Texas. (Footnote added.)

All of the board's records that come under section 82.003(b) or (c) of the Government Code or under the exemptions listed under the supreme court's rule are not subject to the act. Thus, the board need not seek the attorney general's opinion as to whether it must release the records.

The first request for information is for the bar examination results of a person who is not the requestor. Subsection 82.003(b) of the Government Code and the supreme court's July 1987 order clearly exempt this information from the scope of the act. You need not release the information to the requestor, and in the event of future requests for bar examination results of a person who is not the requestor, you may withhold the information without requesting an open records decision from the attorney general.

The second request is for information "concerning the past and present status of [a certain person who has applied, in the past, to take the state bar examination] and [the person's] eligibility to take the Texas bar examination." All of the documents you have submitted for our review as documents responsive to this request are records relating to the person's moral character and fitness to be an attorney. Subsection 82.003(b) of the Government Code and the supreme court's July 1991 order clearly exempt these records from the scope of the act, and in the event of future requests seeking records relating to an applicant's moral character and fitness, you may withhold the information without requesting an open records decision from the attorney general.

The third request is for all information in your possession regarding an applicant for admission to the Texas Bar, and specifically requesting the applicant's current residential address and current work address. As we have concluded above, all records relating to the applicant's moral character and fitness to be an attorney is outside of the scope of the open records act, and you may withhold the records from

the requestor.<sup>4</sup> We note, however, that you have included as documents responsive to the request copies of letters and a memorandum written during January 1992. The letters are between Bruce Wyatt and Freddy B. Ruiz; the memorandum appears to be from Bruce Wyatt to Rachael Martin. All of the letters and the memorandum relate to Mr. Ruiz's requests for copies of his bar application file, including character and fitness documentation. These documents are not records relating to the moral character and fitness of the applicant. Accordingly, subsection 82.003(c) of the Government Code does not exempt these documents from the scope of the act.

You contend that sections 3(a)(1) and 3(a)(7) of the act except the letters and memorandum from disclosure to the requestor. Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You do not cite any constitutional or statutory provisions, nor any judicial decisions under which documents such as these are confidential. Indeed, with regard specifically to a person's address, we have concluded in prior opinions that section 3(a)(1) does not protect such information from disclosure. *See* Open Records Decision Nos. 478, 455 (1987) at 2-4, 7; 169 (1977) at 6. You do not argue that anything else in the documents are confidential. As section 3(a)(1) does not permit you to withhold these documents, we will consider section (3)(a)(7), the second exception you have claimed.

#### Section 3(a)(7) excepts from required public disclosure

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure.

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<sup>4</sup>You ask whether your office must "go through [your] entire file, line by line, in order to ascertain what is and what is not, lawfully available." In our opinion, the use of the word "records" in Gov't Code § 82.003(c) indicates that each record, in its entirety, relating to an applicant's moral character and fitness is exempted from the scope of the act. Thus, once you have determined that a particular record relates generally to an applicant's moral character and fitness, you need not dissect the document line by line to determine whether some portions of the record do not relate to the applicant's moral character and fitness.

No court has prohibited these documents from disclosure. Nor do they come within the attorney-client privilege, as neither the addressee nor the writer of the letter is acting as attorney for the other. Accordingly, section 3(a)(7) requires you to release these documents to the requestor.

Because statutory law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-267.

Yours very truly,



Kym Oltrogge  
Assistant Attorney General  
Opinion Committee

KO/lmm

Re: ID# 15316  
ID# 15246  
ID# 15272  
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ID# 15344

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