



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 30, 1995

Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy
8505 Cross Park Drive, Suite 110
Austin, Texas 78754-4594

OR95-314

Dear Mr. Brinkley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 31706.

The Texas State Board of Pharmacy (the "board") has received a request for a copy of the board's investigative file relating to a particular matter. The board asserts that the file is confidential and excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the Texas Pharmacy Act, V.T.C.S. article 4542a-1.

Section 17(q) of the Texas Pharmacy Act provides as follows:

Board investigative files and all information and materials compiled by the board in connection with an investigation are confidential and are not subject to disclosure under [chapter 552 of the Government Code], and are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline except that this *information may be disclosed to:*

(1) *persons involved with the board in a disciplinary action against the licensee;*

(2) *pharmacist or pharmacy licensing or disciplinary authorities of other jurisdictions;*

(3) a pharmaceutical peer review committee as outlined in Section 27A of this Act;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

V.T.C.S. art. 4542a-1, § 17(q) (emphasis added). You assert that the investigative file is confidential under section 17(q) and that the requestor is not one of the persons or entities to whom information may be released under subsections (1) - (5). The requestor, on the other hand, insists that he is entitled to receive the information under subsection (1).

You state that the board has not instituted or taken disciplinary action with regard to the investigation, but rather has issued a warning letter which does not constitute disciplinary action. This office has reviewed the warning letter and concurs that it does not constitute disciplinary action. Board disciplinary actions are governed by sections 26, 26A, and 26B of the Texas Pharmacy Act, and are subject to the Administrative Procedure Act. *See id.* § 27. The warning letter merely states that the board may initiate an investigation which could result in disciplinary action if it receives complaints in the future. No reply is required and no sanctions are imposed. *Compare id.* §§ 28, 28A, 28B (disciplinary penalties). Therefore, we conclude that subsection (1) is inapplicable on its face and that there is no basis for the board to release the requested information under section 17(q). Therefore, we conclude that the information may not be released under the Open Records Act.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

¹This office has yet to address the 1993 amendments to section 17(q) in a formal open records decision or attorney general opinion. Thus, this office has not yet considered the meaning of the words "persons involved with the board" in subsection (1) or whether release to the persons and entities listed in subsections (1) - (5) is mandatory on the part of the board or is merely permissive and discretionary. Nor to our knowledge has a court yet done so. Given our conclusion that there is no disciplinary action against the licensee, we need not consider those questions here.

MRC/MAR/rho

Ref.: ID# 31706

Enclosures: Submitted documents

cc: Mr. G. David Smith
4144 North Central Expressway, Suite 1250
Dallas, Texas 75204
(w/o enclosures)