



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 17, 1995

Ms. Barbara M. Holthaus
General Counsel
Texas State Board of Examiners of Psychologists
9101 Burnet Road, Suite 212
Austin, Texas 78758

OR95-1080

Dear Ms. Holthaus:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35834.

The Texas State Board of Examiners of Psychologists (the "board") received two requests from the same requestor for various pieces of information regarding a complaint against a psychiatrist. You claim that the requested information is excepted from disclosure under sections 552.101,¹ 552.103, and 552.111 of the Government Code. You have submitted to this office for review samples of the documents requested.²

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for

¹You claim section 552.101 in connection with the attorney-client privilege. We note that the attorney-client privilege is properly claimed under section 552.107 of the Government Code.

²In reaching our conclusion here, we assume that 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.

an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

It appears that the board received the first request on August 16, 1995. However, the board did not request a decision from this office until September 19, 1995. Therefore, the board did not comply with the mandatory ten-day deadline provided by the Government Code as to the first request. The information responsive to the first request is presumed public unless another source of law or a third-party's interest makes that information confidential.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that section 25A of article 4915c, the Psychologists' Certification and Licensing Act (the "act"), has been amended by Senate Bill 673 to include a confidentiality provision that would encompass the documents requested. Section 25A(e) of the act, as amended, provides:

Except as specifically provided in Subsection (f) of this section, a complaint and investigation under Section 8 of this Act concerning an individual licensed or certified by the Board and all information and materials compiled by the Board in connection with a complaint and investigation are not subject to disclosure under the open records law, Chapter 552, Government Code, and are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to any person or entity.³

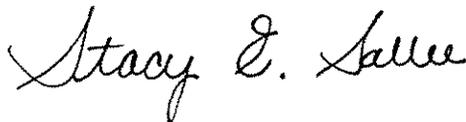
Act of June 16, 1995, 74th Leg., R.S., ch. 965, § 33, 1995 Tex. Sess. Law Serv. 4789, 4836 (Vernon). The requestor does not appear to fall within any of the exceptions listed in subsection (f) of the act. The materials submitted to our office for review are the type of information made confidential by this statute. Therefore, as the information requested is confidential by law, the board has demonstrated a compelling reason to overcome the presumption of openness and must withhold the information requested in the first request.

³This section of S.B. 673 appears to have taken effect immediately. Act of June 16, 1995, 74th Leg., R.S., ch. 965, § 89, 1995 Tex. Sess. Law Serv. 4789, 4836 (Vernon). You claim that the act was effective on September 1, 1995. We note that the result reached here would be the same in either event, as no exception was made in S.B. 673 for investigations undertaken prior to the effective date of the act.

Similarly, under section 552.101 of the Government Code, the board must withhold the information arguably requested in the second request, for which the board made a timely request to this office, as it also falls within the confidentiality provision.⁴

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 should 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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 35834

Enclosures: Submitted documents

cc: Honorable Will Hartnett
1601 Elm Street, Suite 4900
Dallas, Texas 75201
(w/o enclosures)

⁴We need not address whether section 552.008(b) of the Government Code, as amended, applies to the requested information, as the requestor did not state that the information is requested for legislative purposes. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 2, 1195 Tex. Sess. Law Serv. 5127, 5129 (Vernon) (to be codified as section 552.008 of Government Code).