



April 5, 2000

Ms. Amy F. Swann
General Counsel
Texas State Board of Examiners of Psychologist
333 Guadalupe, Suite 2-450
Austin, Texas 78701

OR2000-1295

Dear Ms. Swann:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 133761.

The State Board of Examiners of Psychologists (the “board”) received a request for information related to complaints against a licensee of the board by the requestor and another individual and the board’s subsequent investigation of the complaints. You seek to withhold the responsive information under section 552.101 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. Section 501.205(a) of the Occupation Code provides, in relevant part, that “except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information compiled by the board in connection with the complaint and investigation are not subject to . . . disclosure under Chapter 552, Government Code.” Subsection (b) of section 501.205 provides in relevant part:

A complaint or investigation subject to subsection (a) and all information and materials compiled by the board in connection with the complaint *may* be disclosed to:

.....

(2) a party to a disciplinary action against the license holder or that party’s designated representative[.]

Emphasis added.

In our opinion, it is clear that the information you submitted as responsive to the request is protected from *public* disclosure by section 501.205(a). You ask several questions concerning the application of subsection (b)(2).

First, you ask whether, given the use of the term “may” in subsection (b), the release of complaint and investigation information to a “party to a disciplinary action” under subsection (b)(2) is mandatory or permissive. In our opinion, the use of the term “may” in subsection (b) indicates that release of complaint and investigation information under section (b)(2) is permissive.¹ You also ask, if release under subsection (b) is permissive, “[w]ould the board’s decision to release information on a limited, case-by case basis violate Section 552.223 [of the Public Information Act], which requires that all requests for information be treated uniformly?” In our opinion, subsection (a) makes it clear that the kinds of records at issue are not subject to *public* disclosure under the Public Information Act, chapter 552 of the Government Code. Therefore, the provisions of section 552.223, for uniform treatment of requests, are not applicable to a release of information under subsection (b) of section 501.205. Rather, access to this information is governed by the release provisions of section 501.205. Third, you ask whether a discretionary release of information under subsection (b)(2) of section 501.205 “would result in the Board’s waiver of the right to refuse disclosure to subsequent requestors.” We find no specific provision of law which would operate to effect a waiver of the board’s right to withhold information under the circumstances you describe. We note that section 552.007(b) of the Public Information Act provides that if a governmental body voluntarily releases information to the public such information “must be made available to any person.” But, again, it is our opinion that, per subsection (a) of section 501.205, a release under subsection (b) is not subject to the public release provisions of the Public Information Act.

We caution however, that we cannot anticipate all fact situations which may arise *vis a vis* differential treatment of persons in the board’s discretionary release of information under subsection (b) of section 501.205. For example, there may be instances where unreasonable discrimination among individuals in the release of information under subsection (b) could be subject to judicial remedy. The board may wish to develop reasonable policies in this regard in cooperation with the attorneys in the Office of the Attorney General who represent it.

Finally, you ask about the scope of the term “party” in section 501.205(b)(2). We note that section 2001.003(4) of the Government Code defines “party” for purposes of the Administrative Procedure Act as “a person or a state agency admitted as a party.” Again, we believe that it is for the board, in cooperation with the attorneys in this office who represent

¹Please note that, reading the provisions as a whole, we believe that release under some of the other provisions of subsection (b) is mandatory. For example, subsection (b)(3) provides for release of information to “a law enforcement agency if required by law.”

it, to develop reasonable guidelines, consistent with the applicable statutory provisions, as to scope of the term “party” in section 501.205(b)(2).

To summarize as to the issue of release of the requested information to the requestor here, section 501.205(a) prohibits *public* release of the information. Subsection (b)(2) permits the board, at its discretion to release the information responsive to the part of the requestor’s request seeking information about the complaint and investigation to which she was a party. The board is prohibited by subsection (a) from releasing to the requestor the information responsive to the part of the request seeking information about the complaint and investigation to which she was not a party.

This letter ruling is limited to the particular records 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 records or any other circumstances.

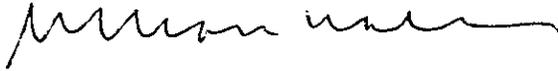
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "William Walker". The signature is fluid and cursive, with a long horizontal stroke at the end.

William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 133761

Encl. Submitted documents

cc: Ms. M. Kay Crowder
7730 Meadow Park Drive, Apt. #202
Dallas, Texas 75230
(w/o enclosures)