



February 11, 2002

Ms. Gay Dodson
Executive Director
Texas State Board of Pharmacy
William P. Hobby Building, Suite 3-600
333 Guadalupe Street, Box 21
Austin, Texas 78701-3942

OR2002-0617

Dear Ms. Dodson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158469.

The Texas State Board of Pharmacy (the “board”) received a written request for information relating to a complaint filed regarding a pharmacist in Jasper County. You state that some responsive information has been released to the requestor. However, you contend that the investigative file responsive to the request is made confidential under section 565.055 of the Occupations Code, and, therefore, is excepted from required public disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information made confidential by other statutes. Section 565.055 of the Occupations Code provides, in relevant part:

(a) The board or the board’s authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed to:

- (1) a person involved with the board in a disciplinary action against the license holder;
- (2) an entity in another jurisdiction that licenses or disciplines pharmacists or pharmacies;
- (3) a pharmaceutical or pharmacy peer review committee as described under Chapter 564;
- (4) a law enforcement agency; or
- (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

You indicate that the submitted information consists of an investigative file prepared by board staff as a result of a complaint against a pharmacist. Specifically, you state that the submitted information relates to fact gathering concerning the complaint and the board's evaluation of the validity of the complaint. Therefore, you contend that the information is confidential under section 565.055(b) of the Occupations Code. Furthermore, you do not indicate, nor does it appear, that the requestor is entitled to the information pursuant to section 565.055(c). We agree that the submitted information is confidential under section 565.055(b) and therefore must be withheld in its entirety pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 474 at 2-3 (1987).

Finally, you have requested a finding that this decision letter may be relied upon as a "previous determination" under section 552.301(a) of the Government Code. We decline to issue such a finding at this time.

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).

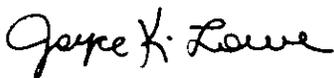
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

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,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/RWP/sdk

Ref: ID# 158469

Enc: Submitted documents

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(w/o enclosures)