OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

March 25, 2002

Ms. Victoria J. L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
1917 IH 35 South
Austin, Texas 78741

OR2002-1464

Dear Ms. Hsu:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160451.

The Texas Board of Professional Engineers (the "board") received a request for information related to the formation of a joint task force; all communications and complaints related to "the preparation of building plans and specifications by individuals and entities other than licensed engineers and architects;" "all documents . . . relevant to any type of legal proceeding against any roofing contractor other than ARMKO Industries . . ."; and "any complaint . . . filed against Buddy Hamblin and any final order or letter resolving such a complaint." You indicate that some responsive information has been provided to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 22A of article 3271a, V.T.C.S., the Texas Engineering Practice Act (the "Act"), provides as follows:

> (a) The Board shall keep an information file about each complaint filed with the Board relating to a license holder.

> (b) If a written complaint is filed with the Board relating to a license holder, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.
>
> (c) The Board shall adopt rules that permit the Board to receive and investigate confidential complaints against license holders or any other person who may have violated this Act. The Board shall maintain the confidentiality of the complaint during the investigation of the complaint.

Section 131.171(d) of title 22 of the Texas Administrative Code provides that "[t]he board shall maintain the confidentiality of the complaint during the investigation of the complaint," and that "[t]he investigation phase of the complaint shall be considered complete for the purposes of maintaining confidentiality when formal charges have been filed."

Thus, the board must maintain complaint information as confidential during the investigation stage. By rule, the board has determined that for purposes of maintaining the confidentiality of the complaint information, a complaint investigation is complete when formal charges are filed. You inform us that the submitted information relates to complaints received by the board which are still under investigation. Thus, we agree that, at this time, the board must withhold the submitted pending complaint and investigative files pursuant to section 552.101 of the Government Code in conjunction with section 22A of article 3271a, V.T.C.S. As section 552.101 is dispositive, we do not address your section 552.103 claim.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 160451

Enc. Submitted documents

c: Ms. Jennifer S. Riggs
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(w/o enclosures)