



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 24, 2003

Ms. Gay Dodson, R.Ph.  
Executive Director/Secretary  
Texas State Board of Pharmacy  
P. O. Box 21  
Austin, Texas 78701-3942

OR2003-1201

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# 176914.

The Texas State Board of Pharmacy (the "board") received a request for copies of particular information pertaining to complaints and disciplinary actions concerning a specified pharmacist for a specified period of time. You state that the board is releasing some responsive information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that we previously addressed a portion of the submitted information in Open Records Letter No. 2002-0617 (2002). Specifically, we ruled in that decision that the board was required to withhold the entirety of the information that it had submitted to us for our review pursuant to section 552.101 of the Government Code in conjunction with section 565.055(b) of the Occupations Code. You do not inform us, nor are we aware, of any changes with regard to the law, facts, and circumstances on which that ruling was based. Accordingly, we conclude that the board must rely on our decision in Open Records Letter

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<sup>1</sup> We note that section 552.301(e) does not serve as an exception to disclosure under the Public Information Act (the "Act"). Accordingly, we do not address whether any portion of the information at issue is excepted from disclosure under section 552.301(e) of the Government Code.

No. 2002-0617 (2002) with respect to the information requested in this instance and withhold Attachments C and D from the requestor. *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You claim that Attachment E constitutes notes taken by attorneys during the course of a specified informal conference that are not responsive to the request. Based on our review of your representation and this information, we agree and find that this information is not responsive to the request. Accordingly, we need not address whether Attachment E is subject to disclosure under the Act.

You claim that Attachment F is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 565.055 of the Occupations Code.<sup>2</sup> Section 565.055 provides in pertinent 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;

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<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

(4) a law enforcement agency; or

(5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

Occ. Code § 565.055. You state that the complaints in Attachment F were compiled by the board in connection with an investigation of the specified pharmacist. It does not appear, and you do not otherwise indicate, that the requestor is entitled to Attachment F in this instance pursuant to section 565.055(c). Thus, based on our review of your representations and the information at issue, we agree that Attachment F 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).

You also claim that Attachment G is excepted from disclosure pursuant to section 552.101 in conjunction with section 564.002 of the Occupations Code. Section 564.002 provides that “[t]he records and proceedings of the board . . . in connection with a report under Section 564.001(a) or (b), are confidential and are not considered public information for purposes of Chapter 552, Government Code.” Occ. Code § 564.002. In addition, section 564.001(a) provides that “[a] person . . . who has knowledge relating to an action or omission of a pharmacist in this state . . . that might provide grounds for disciplinary action under Section 565.001(a)(4) or (7) may report relevant facts to the board.” *Id.* § 564.001(a). Further, section 564.003 provides:

- (a) The board may disclose information confidential under Section 564.002 only:
  - (1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;
  - (2) to a pharmacist licensing or disciplinary authority of another jurisdiction;
  - (3) under a court order; or
  - (4) as provided by Subsection (b).
  
- (b) The board may disclose that the license of a pharmacist who is the subject of an *order of the board that is confidential under Section 564.002* is suspended, revoked, canceled, restricted, or retired or that the pharmacist is in any other manner limited in the practice of pharmacy. The board may not disclose the nature of the impairment or other information that resulted in the board’s action.

*Id.* § 564.003 (emphasis added).

We have reviewed your arguments and all of the information that you have submitted. Attachment G constitutes a disciplinary order of the board that was issued in connection with

a report made by a person pursuant to section 564.001(a) of the Occupations Code. Therefore, we agree that section 564.002 is applicable to the disciplinary order in Attachment G and makes such a record of the board confidential. It does not appear, and you do not otherwise indicate, that the requestor in this instance is entitled to Attachment G pursuant to section 564.003(a). Accordingly, we conclude that the board must withhold Attachment G pursuant to section 552.101 of the Government Code in conjunction with section 564.002 of the Occupations Code. However, we note that pursuant to section 564.003(b), the board may disclose to the requestor that the license of this pharmacist is either suspended, revoked, canceled, restricted, or retired or that the pharmacist is in any other manner limited in the practice of pharmacy. *See id.* § 564.003(b).

In summary, the board must rely on our decision in Open Records Letter No. 2002-0617 (2002) with respect to the information requested in this instance and withhold Attachments C and D from disclosure. The board must withhold Attachment F pursuant to section 552.101 of the Government Code in conjunction with section 565.055(b) of the Occupations Code. The board must withhold Attachment G pursuant to section 552.101 in conjunction with section 564.002 of the Occupations Code.

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).

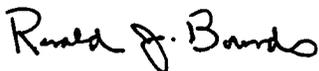
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 176914

Enc. Marked documents

c: Ms. Kimberly Armstrong  
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(w/o enclosures)