



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 3, 2003

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

OR2003-3757

Dear Ms. Dodson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 182129.

The Texas State Board of Pharmacy (the "Board") received a request for prior disciplinary orders concerning two named individuals. You assert the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Initially, we note the requestor seeks information pertaining to two individuals. As you have submitted information related to only one person, we assume the Board has released any responsive information related to the other named individual. However, if the Board has not released this responsive information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302. We caution the Board that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. If the Board possesses responsive information that must be released, the Board should ensure that it does not contain any such confidential information. If the Board believes that any portion of such information is indeed confidential and may not lawfully be released, the Board must challenge this ruling in court as outlined below.

Next, we address your assertion that section 552.101 of the Government Code excepts Attachment C from required public disclosure. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information made confidential by other statutes. Section 564.002 of the Occupations Code 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. Section 564.001(b) provides that “[a] committee of a professional society composed primarily of pharmacists, the staff of the committee, or a district or local intervenor participating in a program established to aid pharmacists . . . impaired by chemical abuse or mental or physical illness may report in writing to the board the name of an impaired pharmacist . . . and the relevant information relating to the impairment.” *Id.* § 564.001(b). Further, section 564.003 provides as follows:

(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).

Based on your arguments and our review of the submitted information, we agree that Attachment C constitutes a disciplinary order of the Board that was issued in connection with a report made in accordance with section 564.001(b) of the Occupations Code. Therefore, we conclude section 564.002 makes Attachment C confidential. Further, we find no indications that the requestor has access to Attachment C under section 564.003(a). Accordingly, the Board must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 564.002 of the Occupations Code. *See Open*

Records Decision No. 614 (construed predecessor statute and concluded *terms* of all “impaired” orders were confidential). 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* Occ. Code § 564.003(b). As section 552.101 is dispositive, we need not address your other claimed exceptions.

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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 182129

Enc: Submitted documents

c: Ms. Tammy King  
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Texas Health and Human Services Commission  
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(w/o enclosures)