



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 3, 2003

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

OR2003-7000

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# 188774.

The Texas State Board of Pharmacy (the "board") received a request for "the names, addresses and phone numbers of any and all individuals and/or businesses that are now under investigation for any violation of their [sic] Occupations Code or Act where the final decision to conduct an investigation of them has been made by your agency." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

We begin by addressing your assertion that the board need not comply with this request because it "does not have an existing record of the names, addresses, and telephone numbers of all current investigations." It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information in existence at the time a request for information is received. *See* Gov't Code §§ 552.002, .021, .227, .351. A governmental body need not release information that did not exist when it received a request or create new information in response to a request. *See Economic Opportunities Dev. Corp. of San Antonio*

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<sup>1</sup>We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). Furthermore, the Act does not generally require a governmental body to produce information in the particular format requested. See *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). However, a governmental body that receives a request has a duty to make a good faith effort to relate the request to information that it holds or to which it has a right of access. See Open Records Decision No. 561 at 8 (1990).

In this instance, the requestor asks for “the names, addresses and phone numbers” of certain individuals but does not request that such information be supplied as a “list” or in any other particular format. You make no assertion that the board does not maintain the requested information. Instead, you state that the board “does maintain information from which such a list can be produced, but the Public Information Act does not require a governmental body to prepare new information in response to a request.” (Citation omitted.) Based on your own admission and the fact that you have submitted a sample of records containing the requested names, addresses, and telephone numbers, it is apparent that the board does in fact maintain the requested information. Thus, while the board need not distill the requested information into the form of a list, it must nevertheless release information that it in good faith believes to be responsive to the request unless such information may or must be withheld pursuant to one of the Act’s exceptions to disclosure. We turn therefore to your claim that the submitted information is confidential by law and therefore excepted from disclosure under section 552.101 of the Government Code.

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

(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; or

(2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline of a license holder.

(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.

Occ. Code § 565.055. You characterize the submitted records as “investigative information.” By this characterization, we understand you to represent that these records were compiled by the board in connection with investigations concerning alleged violations. You do not inform us, nor do the submitted documents indicate, that the requestor in this instance is entitled to this information pursuant to section 565.055(c). Thus, based on our review of your arguments and the information at issue, we agree that information represented by the submitted documents 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) (construing predecessor statute).

Although you request a previous determination with regard to this type of information, we decline to issue one at this time. Accordingly, 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).

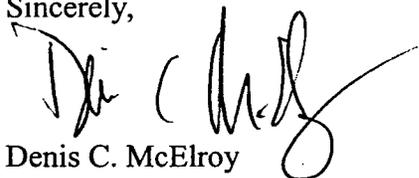
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 188774

Enc. Submitted documents

c: Mr. James B. Lummus  
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(w/o enclosures)