



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2004

Ms. Patricia A. Moore
General Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

OR2004-9185

Dear Ms. Moore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211760.

The State Bar of Texas (the "state bar") received two requests from the same requestor for 1) all records pertaining to a named attorney and 2) information regarding the procedure or manual used by the state bar for processing grievances. You state that you have released some of the requested information. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information consists of information relating to a named attorney's home address, home telephone number, birth date, and internal unique identifier number. The state bar currently has a lawsuit pending against the Office of the Attorney General over the release of similar types of information, *State Bar of Texas v. Abbott*, Cause No. GV403520, 353rd District Court of Travis County, Texas. Your arguments in the instant request for a decision are similar to the state bar's arguments in the pending litigation of the prior ruling. Accordingly, we are closing our file with regard to the portion of the submitted information consisting of the named attorney's home address, home telephone number, birth date, and internal unique identifier number without issuing a decision and will allow the trial court to determine whether the types of information at issue must be released to the public.

We now address your claims for the remaining submitted information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information other statutes make confidential. The submitted information contains the social security number of an applicant to the state bar. Section 58.001 of the Occupations Code provides that the “social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.”¹ Occ. Code § 58.001. We understand that the state bar obtained the social security number in the process of licensing the attorney. Based on this understanding, we find that the social security number we have marked is confidential under section 58.001 of the Occupations Code, and must be withheld from disclosure under section 552.101 of the Government Code.²

You also raise section 552.130 of the Government Code as a possible exception to disclosure. This section excepts from disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [.]” *See* Gov’t Code § 552.130. However, the submitted documents do not contain any section 552.130 information. Thus, this section is inapplicable to the submitted information.

Furthermore, you assert that a portion of the submitted may be subject to section 552.137 of the Government Code. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public. *See* Gov’t Code § 552.137. Upon review of the submitted information, we note that the information does not contain any e-mail addresses. Accordingly, section 552.137 is inapplicable to the remaining submitted information.

Finally, we note that some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

¹ There are currently two different sections of the Occupations Code denominated as section 58.001. The section relating to “[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession” was renumbered from section 56.001 to section 58.001 in 2003. *See* Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Gen. Laws 4140, 4146.

² Because we are able to resolve this issue under section 58.001, we do not address your other arguments for withholding this information.

In summary, we are closing our file with regard to a portion of the submitted information relating to a named attorney's home address, home telephone number, birth date, and internal unique identifier number without issuing a decision and will allow the trial court to determine whether this information must be released to the public. The marked social security number must be withheld pursuant to section 552.101 in conjunction with section 58.001 of the Occupations Code. The remaining information must be released. However, information protected by copyright must be released in compliance with copyright law.

Although you request that this office issue a previous determination regarding the information at issue, we decline to do so 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 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 211760

Enc. Submitted documents

c: Ms. Carin Memmer
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(w/o enclosures)