



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2005

Mr. Rob Hill  
Staff Attorney  
State Board of Dental Examiners  
333 Guadalupe, Tower 3, Suite 800  
Austin, Texas 78701-3942

OR2005-08898

Dear Mr. Hill:

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# 233319.

The State Board of Dental Examiners (the "board") received a request for all information in a specified case file pertaining to a complaint filed by the requestor. 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. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we must address the board's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body that receives a written request for information that it wishes to withhold from disclosure pursuant to an exception under the Act must ask for an attorney general decision no later than ten business days after the date of receiving the written request. *See Gov't Code* § 552.301(a), (b). Under section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific

information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that you received the request for information on May 19, 2005. You did not, however, request a decision from this office or submit the information required by section 552.301(e) until July 27, 2005. Consequently, we find that the board failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *Open Records Decision No. 319* (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* *Open Records Decision No. 630* (1994). As section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address your claim under this section.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Section 254.006 of the Occupations Code states as follows:

- (a) Except as provided by this section, the investigation files and other records of the board are public records and open to public inspection at reasonable times.
- (b) Investigation files and other records are confidential and shall be divulged only to the persons investigated at the completion of the investigation. The board may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency.
- (c) The exception from public disclosure of investigation files and records provided by this section does not apply to the disclosure of disciplinary action of the board, including:
  - (1) the revocation or suspension of a license;
  - (2) the imposition of a fine on a license holder;

- (3) the placement on probation with conditions of a license holder whose license was suspended;
- (4) the reprimand of a license holder; or
- (5) the issuance of a warning letter to a license holder.

Occ. Code § 254.006. You inform us that the submitted information consists of investigation records of the board compiled in response to a complaint filed by the requestor against a dentist licensed by the board. You state that the investigation resulted in “dismissal of the case due to a lack of evidence of a violation [of the Occupations Code or the board’s rules and regulations.]” We therefore understand you to represent that subsection 254.006(c) does not apply in this instance. Based on your representations and our review, we conclude that the submitted information is made confidential in its entirety pursuant to subsection 254.006(b) of the Occupations Code and is therefore excepted from disclosure pursuant to section 552.101 of the Government 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 233319

Enc. Submitted documents

c: Mr. Russell Behrndt  
3903 Oak Meadow Drive  
Round Rock, Texas 78681-2562  
(w/o enclosures)