ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2005

Mr. Robert Simpson
Assistant General Counsel
Texas Medical Examiners Board
P.O. Box 2018
Austin, Texas 78768-2018

OR2005-10828

Dear Mr. Simpson:

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# 237378.

The Texas Medical Board (the "board") received a request for the requestor's "entire file maintained by the [b]oard." You inform us that the board has released some of the requested information. You claim that the rest of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted. We also have considered the comments that we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

We begin by noting that when a governmental body asks this office to decide whether requested information is excepted from public disclosure, it must comply with the deadlines prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301. If the governmental body fails to do so, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision

Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, the requestor asserts that the board failed to comply with section 552.301 in requesting this decision. However, the board's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302. Therefore, we need not determine whether the board has complied with section 552.301 and will consider the board's claim under section 552.101.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. The board contends that the submitted information is confidential under section 164.007(c) of the Occupations Code. Section 164.007(c) provides as follows:

> (c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). Section 164.007(c) is applicable to investigatory records compiled by the board during an investigation of a license holder. You assert that the submitted documents consist of confidential investigative information relating to a license holder that was received or gathered by the board. Based on your representations and our review of the information at issue, we conclude that the submitted information is confidential under section 164.007(c) of the Occupations Code and must be withheld from the requestor under section 552.101 of the Government Code.

You also ask this office to issue a previous determination that would permit the board to withhold information under section 552.101 in conjunction with section 164.007(c) without the necessity of again seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue a previous determination 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).

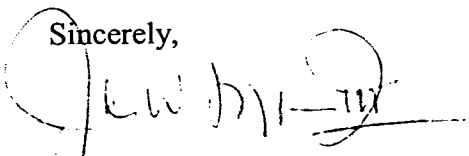
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 237378

Enc: Submitted documents

c: Dr. Tommy E. Swate
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(w/o enclosures)