



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2006

Mr. Robert D. Simpson
Assistant General Counsel
Texas Medical Board
P.O. Box 2018, MC-251
Austin, Texas 78768-2018

OR2006-14074

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# 265733.

The Texas Medical Board (the "board") received a request for information relating to a named physician. You state that the board is releasing public verification and physician profile information, together with any disciplinary action and other information that the board does not believe is excepted from public disclosure.¹ You have submitted information

¹We note that the Texas Medical Practice Act, subtitle B of title 3 of the Occupations Code, requires the board to make public certain information concerning physicians licensed in this state. *See* Occ. Code §§ 154.004 (requiring board to make public on request summary of any previous disciplinary board order against specific physician licensed in Texas), .006 (requiring board's compilation of physician profiles in format easily available to the public).

that the board seeks to withhold under section 552.101 of the Government Code.² We have considered the exception you claim and have reviewed the submitted information.³

We first note that some of the submitted information is not responsive to the instant request. You state that the submitted information consists of representative samples of enforcement investigative files and the named physician's licensure investigative file. The instant request is limited, however, to (1) the "administrative complaint and/or charging document and [the board's] final order relative to disciplinary action [the board] ha[s] taken" and (2) the named physician's current address, date of birth, social security number, school attended, and year of graduation. Accordingly, any other types of information contained in the submitted documents are not responsive to the request. This decision does not address the public availability of the non-responsive information that you have submitted, and such information need not be released. To the extent that the submitted information is responsive to the request, we will address your arguments against disclosure.

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. You contend 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 an application for licensure. Section 164.007(c) also

²We note that the board also notified the named physician of this request for information. As of the date of this decision, this office has received no correspondence from the physician. 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).

³This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the board to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

encompasses records compiled by the board during an investigation of a license holder. You state that the submitted documents consist of a licensure investigative file and representative samples of enforcement investigative files. Based on your representations and our review of the submitted documents, we conclude that the responsive information contained in the submitted investigative files is generally confidential under section 164.007(c) of the Occupations Code.

We note, however, that the requestor identifies herself as a representative of the Professional Compliance Office of the Department of State of the Commonwealth of Pennsylvania (the "PCO").⁴ The requestor states that the PCO seeks access to the requested information for use in connection with a licensing matter involving the physician whose records are the subject of this request. Section 164.007(f) of the Occupations Code provides that "[i]nvestigative information in the possession of the board or an employee or agent relating to discipline of a license holder may be disclosed to . . . the appropriate licensing authority of . . . another state[.]" *Id.* § 164.007(f)(1)(A). You do not inform us that the board is authorized to release the submitted information to this requestor. *See id.* § 164.007(d), (f)-(h). Nevertheless, if this request was made on behalf of the appropriate licensing authority of another state, then the board may release the submitted enforcement files in this instance, pursuant to section 164.007(f) of the Occupations Code. If section 164.007(f) is not applicable in this instance, then the board must withhold the enforcement files under section 552.101 of the Government Code in conjunction with section 164.007(c). In either event, the rest of the responsive information must be withheld from the requestor under section 552.101 and section 164.007(c), because section 164.007(f) does not authorize the disclosure of that information.

You also ask this office to issue a previous determination that would permit the board to withhold investigatory records gathered during an investigation of an application for licensure, a complaint, or compliance by a license holder with a board order without the necessity of again requesting a decision under the Act. *See Gov't Code* § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue such a decision 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

⁴According to the internet website of the Department of State, Commonwealth of Pennsylvania, the PCO receives complaints concerning licensees and registrants of professional and occupational licensing boards and commissions regulated by the Department of State's Bureau of Professional and Occupational Affairs, including the State Board of Medicine.

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).

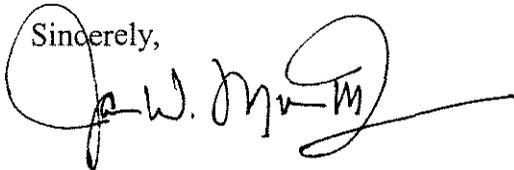
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

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

JWM/sdk

Ref: ID# 265733

Enc: Submitted documents

c: Ms. Kendra A. Dannelley
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