ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2006

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

OR2006-00145

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# 239867

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

Initially, we note that the board currently has a lawsuit pending against the Office of the Attorney General, *Texas State Board of Medical Examiners v. Abbott*, Cause No. GV505206, 201st District Court of Travis County, Texas. The submitted licensure file contains the same type of information that is at issue in the pending litigation, and the board's claims with respect to that information correspond to its arguments in the litigation. Accordingly, this decision does not address your claims with regard to the type of information that is at issue in the litigation. We will allow the trial court to determine whether any of that information must be released to this requestor.

[1]We note that the board also provided notice of this request for information to the physician whose records are requested. As of the date of this decision, this office has received no correspondence from the physician in question. *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).

You contend that the remaining information is excepted under section 552.101 of the Government Code, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. Section 164.007(c) of the Occupations Code provides as follows:

> 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 inform us that the remaining information consists of confidential investigative information received or gathered by the board that relates to a license holder. Based on your representations and our review of the information at issue, we conclude that the remaining information is confidential under section 164.007(c) of the Occupations Code and must be withheld from disclosure 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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/er

Ref: ID# 239867

Enc. Submitted documents

c: Ms. Teena Harvell, CLA
Rodolf & Todd
401 South Boston Avenue
Tulsa, Oklahoma 74103-4014
(w/o enclosures)