

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2006

Ms. Jennifer Tharp
Assistant District Attorney
Comal County Criminal District Attorney's Office
150 North Seguin, Suite 307
New Braunfels, Texas 78130

OR2006-01025

Dear Ms. Tharp:

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# 241590.

The Comal County Criminal District Attorney's Office (the "district attorney") received a request for the name of the individual who filed a specified complaint against 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.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which a governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing

Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state that the informer at issue reported alleged violations of the Health and Safety Code to the district attorney's Environmental Enforcement Division. You state that the Environmental Enforcement Division is responsible for enforcing the laws at issue. However, you do not explain, nor does the submitted information indicate, that violations of these laws carry civil or criminal penalties. Accordingly, we find that you have failed to demonstrate the applicability of informer's privilege in this instance. *But see* Open Records Decision Nos. 279 at 2 (1981), 156 (1977) (granting informer's privilege for the identity of an individual who reported to a city animal control division a possible violation of a statute that carried with it criminal penalties). Therefore, the district attorney may not withhold the informer's identifying information pursuant to section 552.101 in conjunction with the informer's privilege. As you raise no further exceptions to disclosure, the district attorney must release the information at issue to the requestor.

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# 241590

Enc. Submitted documents

c: Ms. Cynthia Regan
122 Red Oak Lane
Canyon Lake, Texas 78133
(w/o enclosures)

NOV 21 2006

At 9:13A. M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GN-06-000103

TEXAS MEDICAL BOARD,
Plaintiff,

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

V.

TRAVIS COUNTY, TEXAS

GREG ABBOTT, ATTORNEY GENERAL
OF THE STATE OF TEXAS,
Defendant.

345th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, Plaintiff Texas Medical Board (Board) and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552, by which Plaintiff seeks relief from compliance with Letter Ruling OR2005-11128. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestor, Brian South, was sent reasonable notice of this setting and of the parties' agreement that the Board must withhold the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, investigative information in the possession of or received or gathered by the Board or its employees or agents relating to an application for license

for Samuel Langhorne Gladney, M.D., that was ordered released by the Attorney General in the underlying letter ruling, is confidential under Tex. Occ. Code § 164.007(c) and therefore excepted from disclosure by Tex. Gov't Code § 552.101;

2. The Board shall withhold from the requestor the information at issue;

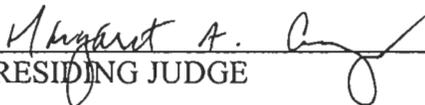
3. Additionally, the Board shall withhold all investigative information in the possession of or received or gathered by the Board or its employees or agents relating to applications for licenses from each requestor in the underlying Attorney General rulings or requests for rulings listed in Exhibit A to this Judgment, as this information is confidential under Occ. Code §§ 164.007(c) or 204.254 and therefore excepted from disclosure by Tex. Gov't Code § 552.101;

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

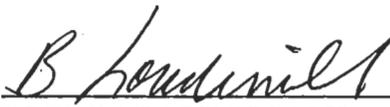
SIGNED this the 21 day of November, 2006.


PRESIDING JUDGE

APPROVED:



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State Bar No. 24050664
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Fax: 320-0167
State Bar No. 12585600
ATTORNEY FOR DEFENDANT

EXHIBIT A
“Pending Litigation” Requests

AG Ruling & Date of Issuance	Request for Ruling I. D. No. & Date of AG Reply
OR2005-11332 - 12/16/2005	# 238397 - 12/19/2005
OR2005-11394 - 12/19/2005	# 239443 - 12/21/2005
OR2005-11397 - 12/19/2005	# 239875 - 01/09/2006
OR2005-11407 - 12/19/2005	# 240671 - 01/10/2006
OR2005-11495 - 12/21/2005	# 240194 - 01/11/2006
OR2005-11568 - 12/22/2005	# 240900 - 01/13/2006
OR2005-11758 - 12/30/2005	# 240887 - 01/18/2006
OR2005-11763 - 12/30/2005	# 240474 - 01/20/2004
OR2006-00034 -01/03/2006	# 241269 - 01/27/2006
OR2006-00145 -01/05/2006	# 242239 - 02/14/2006
OR2006-00250 -01/09/2006	# 242240 - 02/14/2006
OR2006-00612 - 01/18/2006	# 243209 - 02/15/2006
OR2006-00686 - 01/20/2006	# 242609 - 02/21/2006
OR2006-00939 - 01/27/2006	# 244803 - 03/15/2006
OR2006-00944 - 01/27/2006	# 244438 - 03/21/2006
OR2006-01099 - 02/02/2006	# 245598 - 04/04/2006
OR2006-01590 - 02/17/2006	# 247428 - 04/26/2006
OR2006-01837 - 02/24/2006	# 248387 - 05/04/2006
OR2006-02008 - 03/01/2006	# 248763 - 05/09/2006
OR2006-02372 - 03/09/2006	# 249239 - 05/09/2006
OR2006-02422 - 03/10/2006	# 249552 - 05/19/2006
OR2006-02486 - 03/13/2006	# 249666 - 05/22/2006
OR2006-02683 - 03/17/2006	# 250654 - 05/31/2006\
OR2006-02691 - 03/20/2006	
OR2006-02849 - 03/23/2006	
OR2006-03061 - 03/28/2006	
OR2006-03487 - 04/07/2006	
OR2006-03784 - 04/17/2006	
OR2006-03847 - 04/18/2006	
OR2006-04701 - 05/08/2006	
OR2006-04880 - 05/11/2006	
OR2006-04941 - 05/12/2006	
OR2006-05334 - 05/22/2006	