



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2006

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

OR2006-01407

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# 243290.

The Texas Medical Board (the "board") received a request for information, including disciplinary documentation and proof of licensure, regarding a named individual. 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 from 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. Section 164.007(c) of the Occupations Code 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). This section applies to complaint and related investigatory records gathered by the board during an investigation of a license holder. Section 164.007(c) makes confidential all documents that the board compiles in investigating a license holder and all documents compiled in investigating an applicant for a license. You state that the submitted information consists of investigative information received or gathered by the board. However, you explain that the named individual who is the subject of the investigation “is not a license holder of this agency, but is (or at the time was) a license holder of the Texas State Board of Examiners of Psychologists [the ‘board of psychologists’].” The confidentiality provisions of section 164.007(c) pertain to a license holder of this board, not to a license holder of the board of psychologists. *See id.* § 164.005(a) (defining complaint as charge made by credible person under oath that, if proven, “could affect the legal rights or privileges of a license holder . . . under the board’s jurisdiction.”). (Emphasis added.) Thus, the submitted information is not confidential under section 164.007(c) of the Occupations Code, and may not be withheld under section 552.101 of the Government Code on that basis.

You also assert that the submitted information is confidential under section 501.205 of the Occupations Code. Chapter 501 of the Occupations Code codifies the Psychologists’ Licensing Act. *See id.* §§ 501.001, *et seq.* Section 501.205(a) provides, in relevant part, that “except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by the board in connection with the complaint and investigation are not subject to . . . disclosure under Chapter 552, Government Code[.]” *See id.* § 501.205(a). The confidentiality provisions of section 501.205(a) pertain to actions by the board of psychologists. *See id.* § 501.205(a) (defining “board” for purposes of chapter 501). Because the submitted information was not compiled by the board of psychologists, it is not confidential under section 501.205 of the Occupations Code, and may not be withheld under section 552.101 of the Government Code on that basis.

We note that some of the submitted information is subject to common law privacy. Section 552.101 also encompasses the doctrine of common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We have marked the information that must be withheld under section 552.101 in conjunction with common law privacy.

Finally, some of the remaining information is subject to section 552.137 of the Government Code, which excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically

excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not specifically excluded by section 552.137(c). You do not inform us that the board has received consent for the release of the e-mail addresses at issue. Therefore, the board must withhold the e-mail addresses we have marked under section 552.137.

In summary, we have marked the information that must be withheld (1) under section 552.101 in conjunction with common law privacy, and (2) under section 552.137. The remaining submitted information must be released 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,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/er

Ref: ID# 243290

Enc. Submitted documents

c: Ms. Dorothy Clay Sims
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(w/o enclosures)