

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

March 21, 2006

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

OR2006-02746

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# 244440.

The Texas Medical Board (the "board") received a request for all documents regarding the application, approval, licensure, and supervision of a named physician's assistant. You state that the board has provided the requestor with a copy of the public verification/ physician profile information, including any disciplinary action, and other information the board believes is not excepted from required public disclosure. You claim that the submitted 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 excepts from required 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 204.254 of the Occupations Code. Section 204.254 provides as follows:

A complaint, adverse report, investigation file, other report, or other investigative information in the possession of or received or gathered by the physician assistant board or a board employee or agent relating to a license holder, a license application, 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 any person other than the board or a board employee or agent involved in license holder discipline.

Occ. Code § 204.254. You assert that this provision applies to a complaint investigation file as well as a license application file. You argue, therefore, that the submitted information is confidential and not subject to public disclosure. We disagree. Section 204.254 applies to complaint and related investigatory records gathered by the board during an investigation of a license holder. Upon review, we conclude that the submitted information consists purely of licensure information. As such, the submitted information does not constitute complaint investigation information for purposes of section 204.254. Therefore, the submitted licensure information may not be withheld on that basis.

We note, however, that the submitted licensure information contains biometric identifiers. Section 552.101 of the Government Code encompasses Chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. See Gov't Code § 560.004 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the board must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

We also note that the submitted information contains information that is protected under common law privacy. Section 552.101 of the Government Code 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. 540 S.W.2d at 683. Thus, the board must withhold the information we have marked pursuant to section 552.101 in conjunction with common law privacy.

Additionally, a portion of the submitted 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

address we have marked is 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 address at issue. Therefore, the board must withhold the e-mail address we have marked under section 552.137.

Finally, we note that the submitted information contains a social security number. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the board must withhold the social security number we have marked under section 552.147 of the Government Code.¹

In summary, the board must withhold: 1) the fingerprints we have marked pursuant to section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; 2) the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common law privacy; 3) the e-mail address we have marked pursuant to section 552.137 of the Government Code; and 4) the social security number we have marked pursuant to section 552.147 of the Government Code. 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

¹We note that section 552.147(b) authorizes a governmental body to redact a living person’s social security number without the necessity of requesting a decision from this office under the Act.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 244440

Enc. Submitted documents

c: Mr. James S. Bromberg
3703 Aspenwood
Richmond, Texas 77469
(w/o enclosures)

NOV 21 2006

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

CAUSE NO. D-1-GN-06-001394

TEXAS MEDICAL BOARD,
Plaintiff,

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IN THE DISTRICT COURT OF

V.

TRAVIS COUNTY, TEXAS

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,
Defendant.

98th 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 OR2006-02746. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestor, James S. Bromberg, M.D., 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 Nicole M. Delhamer, P.A., that was ordered released by the Attorney General in the underlying letter ruling, is confidential under Tex. Occ. Code § 204.254 and therefore excepted from disclosure by Tex. Gov't Code § 552.101;

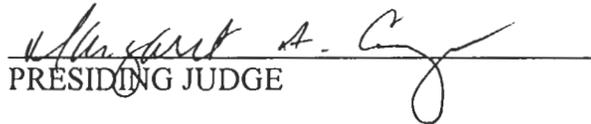
2. The Board shall withhold from the requestor the information at issue described in Paragraph 1 of this Judgment;

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

4. All relief not expressly granted is denied; and

5. 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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