



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2006

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

OR2006-07365

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# 252316.

The Texas Medical Board (the "board") received a request for information relating to a named physician. 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 have reviewed the information you submitted.

Section 552.101 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 have asserted 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). Pursuant to section 552.303 of the Government Code, we requested further argument in support of your claim under section 164.007(c).¹

You have responded that the physician who is the subject of this request for information “is not a current licensee of [the board].” Instead, you state that the board issued this physician an “Institutional Permit,” now known as a “Physician-in-Training Permit,” for purposes of his medical training in the State of Texas. *See id.* § 155.105 (physician-in-training permit may be issued to physician not otherwise licensed by board who is participating in graduate medical education training program). You state that the submitted information relates to the board’s investigation of the application for the Institutional Permit. You inform us that this information “was derived from the licensure investigation file . . . and constitutes information received or gathered by the [b]oard, its employees, and/or agents relating to an application for license.” Thus, we understand you to claim that the submitted information constitutes confidential investigative information of the board for the purposes of section 164.007(c) of the Occupations Code.²

We note, however, that section 164.007(c) is made specifically applicable to a “complaint, adverse report, investigation file, other investigation report, and other investigative information . . . relating to a *license* holder [or] an application for *license*[.]” Occ. Code § 164.007(c) (emphasis added). You concede that the submitted information does not concern a physician who holds a license issued by the board. Likewise, you do not inform us that this physician has ever applied to the board for a license. We note that statutory confidentiality under section 552.101 of the Government Code must be express, and a confidentiality requirement will not be implied from a statutory structure. *See Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987).* Furthermore, the language of a statutory confidentiality provision controls the scope of its protection. *See Open Records Decision No. 649 at 3 (1996).* You have not explained why section 164.007(c) should be construed to encompass information relating to an application for an “Institutional Permit” or demonstrated how section 164.007(c) could be so interpreted. *Compare* Occ. Code § 155.105(a) (board may issue physician-in-training permit to physician not otherwise licensed by board) *with id.* §§ 155.001 (person may not practice medicine in this state unless

¹We also requested explanation of your previous citation of sections 155.007 and 155.058 of the Occupations Code. As you have not responded, it is our understanding that the board does not rely on sections 155.007 and 155.058.

²We note that you previously submitted a single document as being responsive to this request for information. As an attachment to your response under section 552.303 of the Government Code, you have submitted a second document that you state is also responsive to this request. Although your submission of this second document was not timely under section 552.301 of the Government Code, your claim under section 164.007 of the Occupations Code can provide a compelling reason for non-disclosure. *See Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 630 at 3 (1994), 325 at 2. (1982).*

person holds license issued under this subtitle), 155.002 (board may issue license to practice medicine to person who submits license application and meets statutory eligibility and examination requirements), 155.0031(a) (prescribing procedures and requirements for application for license). Thus, having considered all of your arguments, we conclude that you have not demonstrated that the submitted information is confidential under section 164.007(c) of the Occupations Code. Therefore, the board may not withhold any of the submitted information on that basis under section 552.101 of the Government Code.

We note, however, that the submitted document 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.³ The board must withhold the social security number under section 552.147. The rest of the submitted information must be released.

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).

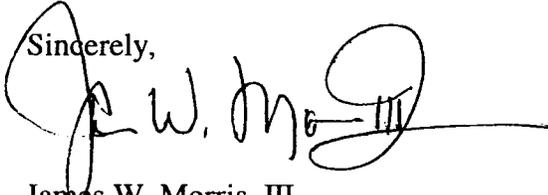
³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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". The signature is fluid and cursive, with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 252316

Enc: Submitted document

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