



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2006

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

OR2006-08199

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# 255084.

The Texas Board of Acupuncture Examiners (the "board") received a request for information pertaining to a named acupuncturist. You state that you have released some of the requested information but claim that the submitted information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 exempts 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 claim that the submitted information is confidential under section 205.3544 of the Texas Occupations Code. Chapter 205 of the Occupations Code governs the practice of

¹We note that the board also provided notice of this request for information to the individual at issue. As of the date of this decision, this office has received no correspondence from the individual 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).

acupuncture and the licensure of acupuncturists. Section 205.3544 provides that the board “shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by section 164.007(c).” Occ. Code § 205.3544. You state that the submitted information consists of the named acupuncturist’s licensure file. However, you do not inform us, and the submitted information does not reflect, that the board has conducted an informal proceeding with regard to the licensee at issue. *See id.* § 205.3541 *et seq.* (setting forth requirements for informal proceedings). Thus, because the board has not demonstrated that the submitted information is an investigation file relating to a license holder in an informal proceeding, we find that the submitted information is not confidential under section 205.3544 and may not be withheld under section 552.101 on that basis.

Section 552.101 also 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 §§ 560.001 (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.

Section 552.130 of the Government Code, excepts from disclosure information relating to a Texas motor vehicle driver’s license and information relating to a Texas motor vehicle title or registration.² Gov’t Code § 552.130. The board must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130.

Finally, the submitted information contains social security numbers. 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 Gov’t Code § 552.147. Therefore, the board must withhold the social security numbers we have marked under section 552.147.

In summary, the board must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, the

²The Office of the Attorney General will raise mandatory exceptions such as sections 552.130 and 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

Texas motor vehicle record information we have marked under section 552.130 of the Government Code, and the social security numbers we have marked under section 552.147 of the Government Code. The remaining 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 255084

Enc. Submitted documents

c: Mr. Dan Hargrove
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(w/o enclosures)