



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2006

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

OR2006-10739

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# 259235.

The Texas Medical Board (the "medical board") received a request for information relating to a named physician assistant. You state that the medical board is releasing some of the requested information. You have submitted information that you claim is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.¹

Section 552.101 of the Government Code 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. Section 204.254 of the Occupations Code 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

¹You inform us that the board notified the named physician assistant of this request for information. As of the date of this decision, we have no indication that he has submitted any correspondence to this office. 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).

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 inform us that the submitted information consists of the named physician assistant's licensure investigative file. We note that section 204.254 is applicable to investigative information held, received, or gathered by the Texas Physician Assistant Board, which is an advisory board to the medical board. *See id.* §§ 204.002(2), 204.051(a). We assume that the submitted information is held or was compiled by the physician assistant board. Based on that assumption and our review of the information at issue, we find that the submitted information is confidential under section 204.254 of the Occupations Code. You do not indicate that section 204.255 of the Occupations Code authorizes the release of this information to this requestor. We therefore conclude that the submitted information must be withheld from disclosure under section 552.101 of the Government Code.

You also ask this office to issue a decision that would permit the board to withhold investigative files without the necessity of again requesting a decision from this office under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue such a decision at this time. 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 "J.W. Morris, III", with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 259235

Enc: Submitted documents

c: Mr. Max Freeman
Max Freeman, P.C.
10000 North Central Expressway, Suite 750
Dallas, Texas 75231
(w/o enclosures)

Mr. Jason P. Montague
1401 Crescent Drive
Sherman, Texas 75092
(w/o enclosures)