



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2007

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

OR2007-01132

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# 270159.

The Texas Medical Board (the "board") received a request for information related to a named physician, including complaints, investigative records, licensure information, and litigation records. You state that the board has released public verification and physician profile information, together with any disciplinary action and other information that the board does not believe is excepted from public disclosure under the Act.¹ 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 have reviewed the information you submitted.²

¹We note that the Texas Medical Practice Act, subtitle B of title 3 of the Occupations Code, requires the board to make public certain information concerning physicians licensed in this state. See Occ. Code §§ 154.004 (requiring board to make public on request summary of any previous disciplinary board order against specific physician licensed in Texas), .006 (requiring board's compilation of physician profiles in format easily available to the public).

²This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the board to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We first note that some of the submitted information is encompassed by a previous determination that we recently issued to the board. Open Records Letter No. 2006-14198 (2006) authorizes the board to withhold investigatory records pertaining to licensing investigations of an applicant for a license as a physician under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code without the necessity of requesting an attorney general decision under section 552.301 of the Act. *See* Gov't Code § 552.301(a), (f); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)). Therefore, the board must withhold Exhibit B pursuant to Open Records Letter No. 2006-14198.³

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. You raise section 552.101 in conjunction with section 164.007(c) of the Occupations Code, which 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). Section 164.007(c) is applicable to investigatory records compiled by the board during an investigation of a license holder. You indicate that Exhibit A consists of investigative information that was received or gathered by the board and that relates to a license holder. Based on your representations and our review of the information at issue, we conclude that the remaining information is confidential under section 164.007(c). You do not inform us that the board is authorized to release the information in question to this requestor. *See id.* 164.007(d), (f)-(h). Therefore, the board must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 164.007(c) of the Occupations Code.

In summary: (1) the board must withhold Exhibit B pursuant to Open Records Letter No. 2006-14198; and (2) the board must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code.

³As we are able to make this determination, we need not address your submitted arguments against disclosure of the licensure files.

You also ask this office to issue a *previous determination* that would permit the board to withhold investigatory records compiled by the board during an investigation of a license holder without the necessity of again requesting an attorney general decision 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).

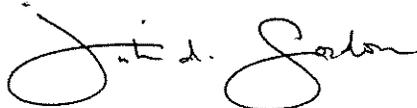
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 that reads "Justin D. Gordon". The signature is written in a cursive style with a large initial "J" and "G".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 270159

Enc. Submitted documents

c: Ms. Jodi Stuart
Tinsman & Sciano, Inc.
10107 McAllister Freeway
San Antonio, Texas 78216
(w/o enclosures)