



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2008

Ms. Dianne L. Izzo
General Counsel
Texas State Board of Examiners of Psychologists
333 Guadalupe, Suite 2-450
Austin, Texas 78701

OR2008-11167

Dear Ms. Izzo:

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# 319055.

The Texas State Board of Examiners of Psychologists (the "board") received a request for all correspondence between the board and those individuals against whom the requestor has filed complaints. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.¹ You also state, and provide documentation showing, that you notified certain individuals of the request and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).² We have considered the exceptions you claim and reviewed the submitted information.

¹We note that the board asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

²As of the date of this decision, this office has received no correspondence from the individuals in question.

Section 552.101 of the Government Code excepts from 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 assert that the submitted information is confidential under section 501.205 of the Occupations Code. Chapter 501 of the Occupations Code codifies the Psychologists’ Licensing Act. *See* Gov’t Code §§ 501.001 *et seq.* Section 501.205(a) provides, in relevant part, that “except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by the board in connection with the complaint and investigation are not subject to . . . disclosure under Chapter 552, Government Code[.]” *See id.* § 501.205(a). We note that the confidentiality provisions of section 501.205(a) pertain only to complaints and investigations that involve license holders. You state that the individuals being investigated by the board are not license holders. Thus, we find that you have failed to demonstrate that the submitted information is confidential under section 552.101 in conjunction with section 501.205(a) of the Occupations Code. Accordingly, none of the submitted information may be withheld on that basis.

The board claims that the submitted information is excepted from disclosure under section 552.110 of the Government Code. By its terms, section 552.110 only protects the interests of the person from whom the information was obtained. This provision does not protect the interests of the governmental body that receives proprietary information, nor does it allow a governmental body to assert section 552.110 for information it creates. A governmental body, however, may assert section 552.110 on behalf of an interested third party. We understand the board to raise section 552.110 on behalf of the non-licensed hypnotherapists who are the subject of the requestor’s complaints. Therefore, we will address the board’s arguments on behalf of these individuals under section 552.110.

Section 552.110(b) of the Government Code protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* You contend that the release of some of the submitted information would cause substantial competitive harm to the individuals to which the information pertains. After reviewing your arguments and the information at issue, however, we find that you have made only conclusory allegations that release of this information would result in substantial competitive harm and have not provided a specific factual or evidentiary showing to support this allegation. *See* Open Records Decision No. 661 (1999) (must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Thus, none of the remaining information may be withheld on the basis of section 552.110(b).

We note that some of the submitted information consists of personal e-mail addresses that are subject to section 552.137 of the Government Code.³ Section 552.137 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 addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the board must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.

We also note that some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. See Open Records Decision No. 550 (1990).

In summary, the board must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released, but only in accordance with copyright law.

You also ask this office to issue a previous determination allowing the board to withhold complaint information requested by prosecutors without the necessity of requesting an attorney general opinion. We decline to issue a previous determination to the board at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us and may not be relied upon as a previous determination regarding any other records or any other circumstances.

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 file suit in

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

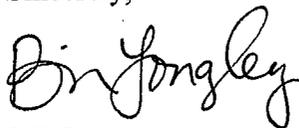
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Ref: ID# 319055

Enc. Submitted documents

c: Mr. Richard O. Bush, Ph.D.
1437 Rollins Drive
Allen, Texas 75013
(w/o enclosures)