



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 6, 2009

Mr. J. Randel Hill  
General Counsel  
Texas State Board of Public Accountancy  
333 Guadalupe, Tower III Suite 900  
Austin, Texas 78701-3900

OR2009-01584

Dear Mr. Hill:

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# 334300.

The Texas State Board of Public Accountancy (the "board") received a request for the following: (1) information pertaining to Ratifications that accompanied Agreed Consent Orders, entered in disciplinary actions, that contain any language waiving a right to a hearing regarding reinstatement; and (2) information pertaining to a specified disciplinary action. You state the board has released some of the requested information. You also state that some of the requested information does not exist.<sup>1</sup> You claim that the submitted information is

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

excepted from disclosure under sections 552.101 and 552.107 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information constitutes part of a completed investigation subject to section 552.022. The board must release this information unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. You claim that the submitted information is excepted from disclosure under section 552.107 of the Government Code. We note that this section is a discretionary exception that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, the board may not withhold the submitted information under section 552.107. The Texas Supreme Court has held, however, that the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider whether the board may withhold the submitted information under Texas Rule of Evidence 503. Furthermore, because information subject to section 552.022(a)(1) may be withheld under section 552.101 of the Government Code, we will address your argument under this exception for the submitted information.

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. Section 552.101 encompasses information made confidential by other statutes. Section 901.160 of the Occupations Code provides as follows:

(a) The board shall make available at the board's offices in Austin any file maintained or information gathered or received by the board from a third

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<sup>2</sup>You also raise section 552.101 of the Government Code in conjunction with section 552.107 on the basis of the attorney-client privilege. However, section 552.101 does not encompass the attorney-client privilege or other exceptions found in the Act. *See* Open Records Decision No. 676 at 1-3 (2002).

party regarding a license applicant or current or former license holder for inspection by the applicant or license holder during normal business hours.

(b) A license applicant or current or former license holder may authorize the board in writing to make available for inspection by a designated person or by the public any information gathered or received by the board from a third party regarding the applicant or license holder.

(c) Except on written authorization as provided by Subsection (b), the following information gathered or received by the board is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) information regarding the qualifications of an applicant or license holder to be certified as a certified public accountant;

(2) information regarding the qualifications of an applicant or firm license holder to be issued a firm license as a certified public accountancy firm; and

(3) information regarding a disciplinary action under Subchapter K against a license holder or an applicant to take the uniform CPA examination, before a public hearing on the matter.

(d) A final order of the board relating to a disciplinary action against a license holder, including a reprimand, that results from an informal proceeding or a formal public hearing is subject to disclosure to the public and is available on request.

Occ. Code § 901.160. You assert that the submitted information was collected in the course of a disciplinary action against a license holder prior to a public hearing. Because it does not appear that the exception to confidentiality in section 901.160(b) applies, we agree that the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 901.160(c) of the Occupations Code.<sup>3</sup>

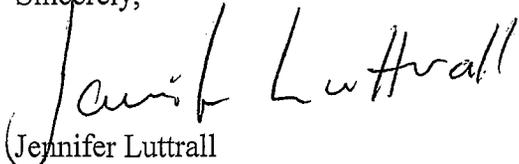
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 334300

Enc. Submitted documents

c: Requestor  
(w/o enclosures)