ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2009

Mr. Dan Meador
Assistant General Counsel
Texas Department of State Health Services
P. O. Box 149347
Austin, Texas 78714-9347

OR2009-05920

Dear Mr. Meador:

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# 341708 (DSHS OR/CMS File No. 014370-498-2009).

The Department of State Health Services (the "department") received a request for the respondent's answer to the requestor's complaint. 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 reviewed the submitted information.

Initially, we note that only the portion of the submitted information we have marked is responsive to the present request, which seeks the respondent's answer to the requestor's complaint. The remaining information is not responsive to this request. The department need not release nonresponsive information in response to this request and this ruling will not address that information.

Next, 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 chapter 605 of the Occupations Code. This chapter provides for the investigation of complaints filed with the Texas Board of Orthotics and Prosthetics by the Commissioner of Public Health, which we understand are both part of the department. Section 605.2021 provides in relevant part the following:

> (h) All information and materials subpoenaed or compiled by the [Texas Board of Orthotics and Prosthetics] in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:
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> > (1) persons involved with the [Texas Board of Orthotics and Prosthetics] in a disciplinary action against the holder of a license;
> >
> > (2) professional orthotist or prosthetist disciplinary boards in other jurisdictions;
> >
> > (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
> >
> > (4) law enforcement agencies; and
> >
> > (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.
>
> (i) The filing of formal charges by the [Texas Board of Orthotics and Prosthetics] against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the [Texas Board of Orthotics and Prosthetics] are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

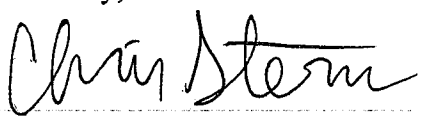
Occ. Code § 605.2021(h), (i). You state that the submitted information was "gathered [or] created in response to a complaint and an investigation occurred." You also state that the exceptions to confidentiality under section 605.2021(h) are not applicable, and you do not indicate that the submitted information is subject to release under section 605.2021(i). Based on your representations and our review, we agree you have established that the submitted information was subpoenaed or compiled by the Texas Board of Orthotics and Prosthetics in connection with a complaint and investigation. Therefore, we find that the submitted information is confidential under section 605.2021 of the Occupations Code and must be withheld under section 552.101 of the Government Code.

In summary, (1) the department need not release nonresponsive information in response to the present request; and (2) the department must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 605.2021 of the Occupations Code.

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.

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, 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 341708

Enc. Submitted documents

c: Requestor
(w/o enclosures)