



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2009

Mr. Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
P.O. Box 4200
Austin, Texas 78765-4200

OR2009-06532

Dear Mr. Maxwell:

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# 343174.

The Texas State Board of Plumbing Examiners (the "board") received a request for licensee information the board provides to the Texas Guaranteed Student Loan Corporation pursuant to section 57.491 of the Texas Education Code. You explain the responsive licensee information includes, among other things, licensees' names, social security numbers, dates of birth, home and work addresses and telephone numbers, and license numbers. You claim some of the responsive categories are excepted from disclosure under sections 552.101, 552.143, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you acknowledge, and we agree, the board failed to request a ruling or submit the responsive information within the statutory time periods prescribed by sections 552.301(b) and 552.301(e) of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because sections 552.101, 552.143, and 552.147 can provide compelling reasons to withhold information, we will consider whether or not these exceptions are applicable to the requested information.

You generally assert some or all of the responsive information is confidential under section 552.101 of the Government Code. This section excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, you have not directed our attention to any law, nor are we aware of any law, that makes any of the responsive information confidential. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Consequently, you have failed to demonstrate the responsive information is confidential under section 552.101 of the Government Code.

You claim the licensees’ dates of birth are confidential under section 552.143 of the Government Code, which provides in relevant part:

(a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021.

(b) Unless the information has been publicly released, pre- and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

(c) All information regarding a governmental body’s direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), (13)-(16) is confidential and excepted from the requirements of Section 552.021. This Subsection does not apply to a governmental body’s purchase, holding, or disposal of, restricted securities for the purpose of reinvestment nor does it apply to a private investment fund’s investment in restricted securities. This Subsection applies to information regarding a direct purchase, holding, or disposal of restricted

securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

Gov't Code § 552.143 (a)-(c). Section 552.143 makes confidential certain investment fund information pertaining to governmental bodies. You have not explained, nor can we discern, however, how section 552.143 is applicable to any information the board collects and maintains regarding its licensees. Consequently, you have failed to demonstrate the licensees' dates of birth may be withheld under section 552.143 of the Government Code.

You claim the licensees' social security numbers are confidential under section 552.147 of the Government Code, which provides in relevant part:

(a) [t]he social security number of a living person is excepted from [required public disclosure], but is not confidential under this section and this section does not make the social security number of a living person confidential under another provision of [the Act] or other law.

(b) [a] governmental body may redact the social security number of a living person from any information the governmental body discloses . . . without the necessity of requesting a decision from the attorney general under [the Act].

Id. § 552.147 (a), (b). Section 552.147 expressly does not make social security numbers confidential under the Act. This section does, however, give governmental bodies the discretion to withhold or release social security numbers of living individuals. Thus, the board has the discretion to withhold the licensees' social security numbers under section 552.147 of the Government Code.

Finally, you ask whether the responsive information may be provided to the requestor pursuant to the intergovernmental transfer doctrine. The requestor, in this instance, is a representative of the Texas Higher Education Coordinating Board. Generally, whether a governmental entity may release information to another governmental entity is not a question under the Act, as the Act is concerned with the required release of information to *the public*. *See id.* §§ 552.001, .002, .021; *see also* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision Nos. 661 (1999), 655 (1997). This office has concluded information ordinarily may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinions H-836 (1976), H-242, M-713; Open Records Decision Nos. 655, 414 (1984). Thus, pursuant to the intergovernmental transfer doctrine, the board has the discretion to release the responsive information to the requestor.

You also ask, however, if the board can charge the requestor for providing the responsive information. The Act contains specific rules regarding permissible charges to provide

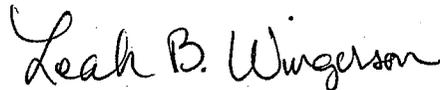
information to the public. *See* Gov't Code §§ 552.261-.275. If the board treats the request as a public information request under the Act, the board may charge the requestor pursuant to the cost provisions of the Act. However, if the board provides the responsive information pursuant to an intergovernmental transfer, such a release is outside the scope of the Act and the board may not charge the requestor pursuant to the cost provisions of the Act.

In summary, if the board treats the request as a public information request under the Act, it has the discretion to withhold or release the licensees' social security numbers under section 552.147 of the Government Code. The remaining information must be released. However, the board has the discretion to release the responsive information in its entirety to the requestor pursuant to an intergovernmental transfer.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 343174

Enc. Submitted documents

c: Requestor
(w/o enclosures)