



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2009

Ms. Gay Dodson
Executive Director/Secretary
Texas State Board of Pharmacy
333 Guadalupe Street, Suite 3-6000
Austin, Texas 78701-3943

OR2009-08340

Dear Ms. Dodson:

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# 346941.

The Texas State Board of Pharmacy (the "board") received a request for the "audit results" and related documents pertaining to a named individual. You state that you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed 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, such as section 565.055 of the Occupations Code. Section 565.055 provides:

- (a) The board or the board's authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.
- (b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline of a license holder.

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed to:

(1) a person involved with the board in a disciplinary action against the license holder;

(2) an entity in another jurisdiction that licenses or disciplines pharmacists or pharmacies;

(3) a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

(4) a law enforcement agency; or

(5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

Occ. Code § 565.055. You state that the submitted information consists of documents that “were made at the request of the [board] or an authorized representative in the course of investigating and gathering evidence concerning an alleged violation of the Texas Pharmacy Act or Board Rule.” You do not inform us that the requestor is entitled to this information pursuant to section 565.055(c). Thus, based on our review of your arguments and the information at issue, we agree that the submitted information is confidential under section 565.055(b) and must be withheld in its entirety pursuant to section 552.101 of the Government Code.¹ See Open Records Decision No. 474 at 2-3 (1987) (construing predecessor statute).

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,

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'M. Entsminger', with a stylized flourish at the end.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 346941

Enc. Submitted documents

c: Requestor
(w/o enclosures)