



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Mr. Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
1917 IH-35 South
Austin, Texas 78741

OR2009-12258

Dear Mr. Farrow:

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# 354439.

The Texas Board of Professional Engineers (the "board") received a request for (1) correspondence between a named individual or either of two named entities and the board, (2) "any Report of Investigation Memorandum," (3) "any Case Action Memo," and (4) "any Enforcement Detail Report." You state information responsive to items one and four of the request have been or will be released. You further state that information responsive to item two of the request does not exist in the board's records.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

encompasses information protected by other statutes. Section 1001.252 of the Occupations Code provides in part:

(a) The board shall adopt rules that permit the board to receive and investigate a confidential complaint against a license holder or other person who may have violated this chapter. The board shall maintain the confidentiality of the complaint during the investigation.

Occ. Code § 1001.252(a). You inform us that the board has promulgated board rule 139.11, which provides:

(a) The board shall initiate or receive and investigate a complaint against a license holder or other person who may have violated the Act or board rules.

(b) The board shall maintain the confidentiality of the complaint from receipt through the investigation of the complaint. The complaint information will no longer be confidential after formal charges are filed with the State Office of Administrative Hearings or after the investigative file is closed. The following documents in an investigative file are releasable to a respondent or an attorney representing the respondent before the [b]oard during the informal resolution process of a complaint: copies of the original complaint documentation; copies of communications to or from the [b]oard and the complainant, the respondent, witnesses, technical experts used by the [b]oard to advise on the complaint issues, and private or public entities regarding requests for records, documents, or information regarding the complaint; and witness interview reports.

22 T.A.C. § 139.11(a), (b). Both section 1001.252(a) of the Occupations Code and board rule 139.11 require the board to maintain the confidentiality of complaint information during the investigation of the complaint. You state that the requested information relates to a pending investigative matter against a license holder. You further state “no formal charges have been filed” in this case and the information at issue “does not fall within the categories of documents that would be releaseable” under section 139.11(b). Based on your representations and our review of the information at issue, we agree that the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1001.252(a) of the Occupations Code.² We note that complaint information is no longer confidential once formal charges have been filed or once the investigation is closed.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'MA LA', is written over the typed name.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/sdk

Ref: ID# 354439

Enc. Submitted documents

c: Requestor
(w/o enclosures)