



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2009

Mr. C. David Richards, III
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-12387

Dear Mr. Richards:

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# 354233 (DSHS File No. O15546-2009).

The Texas Department of State Health Services (the "department") received a request for a copy of the hearing record and any other documentation related to a specified complaint, as well as any audio recordings made on October 30, 2008 or June 11, 2009. You claim 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. We have also considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note you have not submitted any hearing records or audio recordings for our review. To the extent any information responsive to this portion of the request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we address the requestor's argument that the department failed to comply with the ten-business-day deadline prescribed by section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply no later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). The department asserts it received

the request on June 18, 2009. The requestor contends the department received the request on June 15, 2009. The department observed a skeleton day on June 19, 2009. Accordingly, if the request for information was received on June 15, 2009, the ten-business-day deadline was June 30, 2009. The department submitted its request for an open records decision to this office on June 30, 2009; therefore, we find the department complied with the procedural requirements of the Act.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses chapter 401 of the Occupations Code. This chapter provides for the investigation of complaints filed with the State Board of Examiners for Speech-Language Pathology and Audiology (the "board"), which is a part of the department. Section 401.2535 provides, in relevant part, the following:

(h) All information and materials subpoenaed or compiled by the board 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:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional speech-language pathologist and audiologist licensing or disciplinary boards in other jurisdictions;
- (3) peer assistant 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.

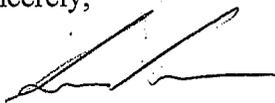
(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Occ. Code § 401.2535(h), (i). You state the submitted information was compiled by the board in connection with a complaint and a pending investigation. You state the exceptions to confidentiality under section 401.2535(h) are not applicable. However, the requestor argues that as the representative of the complainant, he is a person involved with the board in a disciplinary action against the holder of a license. Thus, we must rule conditionally. If the requestor is a person involved with the board in a disciplinary action against the holder of a license, the submitted information may be disclosed to the requestor pursuant to section 401.2535(h)(1). If the requestor is not a person involved with the board in a disciplinary action against the holder of a license, the submitted information is confidential under section 401.2535(h), and the department must withhold it under section 552.101 of the Government Code. However, if the department has filed formal charges against the named individual, the nature of those charges, disciplinary proceedings of the board, and any final disciplinary actions are not confidential and must be released to the requestor. *See id.* § 401.2535(i).

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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 354233

Enc. Submitted documents

c: Requestor
(w/o enclosures)