



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 29, 2009

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

OR2009-15349

Dear Mr. Jansky:

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# 359736 (DSHS File No. O16087-2009).

The Texas Department of State Health Services (the "department") received a request for information regarding the person who requested information from the requestor pertaining to her ability to operate a motor vehicle. You state that the department has released or will release some of the requested information. 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, and you acknowledge, that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *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 requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or

where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider whether any of the submitted information must be withheld under that exception.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 12.097 of the Health and Safety Code, which provides as follows:

(a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:

(1) are for the confidential use of the medical advisory board [of the department], a panel, or the Department of Public Safety of the State of Texas;

(2) are privileged information; and

(3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).

(b) In a subsequent proceeding under Subchapter H,¹ Chapter 411, Government Code, or Subchapter N, Chapter 521, Transportation Code, the medical standards division [of the department] may provide a copy of the report of the medical advisory board or panel and a medical report relating to an applicant or license holder to:

(1) the Department of Public Safety of the State of Texas;

(2) the applicant or license holder; and

(3) the officer who presides at the hearing.

Health & Safety Code § 12.097 (footnote in original); *see also id.* §§ 12.092(b) (providing for appointment of medical advisory board to assist department in determining whether driver's license applicant or license holder is capable of safely operating motor vehicle), 12.095 (providing for medical advisory board opinion or recommendation of department). You indicate the submitted information relates to the medical condition of a license holder and is maintained by the medical advisory board. You also state that

¹V.T.C.A., Government Code § 411.171 *et seq.*

section 12.097(b) does not apply in this instance. Based on your representations and our review of the information at issue, we conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 12.097 of the Health and Safety 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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 359736

Enc. Submitted documents

c: Requestor
(w/o enclosures)