



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 30, 2009

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

OR2009-16776

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# 362438 (DSHS OR File O16416-2010).

The Department of State Health Services (the "department") received a request for the requestor's complaint file records. You claim the submitted records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 chapter 401 of the Occupations Code. This chapter provides for 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 [the Act], 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 assistance 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 [the Act].

Occ. Code § 401.2535(h), (i). We understand both submitted complaint files were compiled by the board. You inform this office one of these files was compiled as a result of a complaint and subsequent investigation, and the other file was compiled in response to a separate complaint, and is currently under investigation. You also represent the exceptions to confidentiality under section 401.2535(h) are not applicable. Based on your representations and our review of the submitted information, we agree the submitted records are confidential under section 401.2535(h), and the department must withhold them under section 552.101 of the Government Code. However, to the extent the board has filed formal charges against the requestor with respect to either complaint, the nature of those charges, disciplinary proceedings of the board, and any final disciplinary actions are not confidential and must be released. *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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 362438

Enc. Submitted documents

cc: Requestor
(w/o enclosures)