



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2010

Ms. Suzanne Mitchell
Assistant General Counsel
Texas Medical Board
P.O. Box 2018
Austin, Texas 78768-2018

OR2010-00521

Dear Ms. Mitchell:

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# 366689 (TMB Reference No. 19295).

The Texas Medical Board (the "medical board") received a request for all contact information during a specified time interval regarding physician applicants, licensed physicians, physicians-in-training, board-approved fellowship applications, visiting physician temporary permits, physician assistant applicants, and acupuncturist applicants.¹ You state that some of the requested information has been released.² You claim, however, that responsive telephone and facsimile numbers are excepted from disclosure under

¹You inform us that the board sought and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²You acknowledge that provisions of the Medical Practice Act, subtitle B of title 3 of the Occupations Code, require the board to make public certain information concerning physicians licensed in this state. *See* Occ. Code §§ 154.004 (requiring board to make public on request summary of any previous disciplinary board order against specific physician licensed in Texas), .006 (requiring board's compilation of physician profiles in format easily available to the public). You state that profile information for physician assistants and acupuncturists also is available on the medical board's website at http://reg.tmb.state.tx.us/OnLineVerif/Phys_NoticeVerif.asp.

section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.³

We first note that the submitted documents contain information other than telephone and facsimile numbers. Because the medical board only seeks a ruling on responsive telephone and facsimile numbers, this decision does not address the public availability of any other information to which this requestor seeks access.

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. This exception encompasses information that other statutes make confidential. In Open Records Letter No. 2006-14198 (2006), we construed section 164.007(c) of the Occupations Code, which provides that “[e]ach complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the [medical] board . . . relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential[.]” Occ. Code § 164.007(c). We concluded that section 164.007(c) makes confidential investigatory records compiled by the medical board as part of its investigation of an application for license as a physician. In that same ruling, we issued a previous determination that authorizes the medical board to withhold investigatory records pertaining to a licensing investigation of an applicant for a physician’s license pursuant to section 552.101 in conjunction with section 164.007. *See* Gov’t Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001).

You seek to withhold responsive information that relates to physicians on the basis of section 164.007(c). You state that the information in question is maintained in the medical board’s licensure files. You do not indicate that this information is subject to disclosure under any other provision of section 164.007 of the Occupations Code. *See* Occ. Code § 164.007(d), (f)-(h). To the extent that the information at issue is related to the issuance of *licenses* to physicians, we agree that the medical board must withhold any such information pursuant to section 164.007(c) of the Occupations Code and the previous determination issued in Open Records Letter No. 2006-14198.

We note, however, that the requestor also seeks access to information relating to physicians-in-training, board-approved fellowship applications, and visiting physician temporary permits. Although you also seek to withhold these types of information under section 164.007(c), we note that this statute is made specifically applicable to a “complaint, adverse report, investigation file, other investigation report, and other investigative information . . . relating to a *license* holder [or] an application for *license*[.]” Occ. Code § 164.007(c) (emphasis added). For purposes of section 552.101 of the Government Code,

³This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the board to withhold any information that is substantially different from the submitted information. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from a statutory structure. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987). Likewise, the language of a statutory confidentiality provision controls the scope of its protection. *See* Open Records Decision No. 649 at 3 (1996). The medical board's own rules provide for the issuance of permits, rather than licenses, to physicians-in-training, visiting physicians, and participants in board-approved fellowships. *See* 22 T.A.C. §§ 171.3(a)(6)(A) (physician-in-training permit is permit issued by medical board in its discretion to physician who does not hold license to practice medicine in Texas), 171.3(b)(1) (applicant for physician-in-training permit must present satisfactory proof of, among other things, his or her acceptance into board-approved postgraduate fellowship training program), 172.5 (medical board may issue permit to practice medicine to applicant who intends to practice under supervision of licensed Texas physician). You have not explained why section 164.007(c) of the Occupations Code should be construed to encompass information relating to the medical board's issuance of permits. We therefore conclude that information relating to individuals who have applied for or obtained permits, rather than licenses, is not confidential under section 164.007(c) of the Occupations Code and may not be withheld on that basis under section 552.101 of the Government Code.

You also contend that contact information relating to physicians is confidential under section 552.101 in conjunction with section 156.006 of the Occupations Code. As enacted by the 81st Legislature, this section provides in part:

(a) Each *license* holder shall submit to the board telephone numbers, fax numbers, and e-mail addresses, if available and as appropriate, that the board may use to contact the *license* holder in an emergency.

...

(d) The information provided by a *license* holder under this section is confidential and is not subject to disclosure under Chapter 552, Government Code. []

Occ. Code § 156.006(a), (d) (emphasis added). You contend that section 156.006 reflects a legislative effort to "make sure that a licensee's telephone, fax and email information [are] protected in all but the most urgent public health emergencies." We note, however, that this section is applicable only to physician *license* holders. Thus, by its own terms, section 156.006 does not encompass information relating to individuals who hold permits, rather than licenses, issued by the medical board. We therefore conclude that the medical board may not withhold any such information under section 552.101 of the Government Code on the basis of section 156.006 of the Occupations Code. *See* ORD 658, 649, 487.

Next, we address your claim under section 552.101 in conjunction with section 204.254 of the Occupations Code. This section provides as follows:

A complaint, adverse report, investigation file, other report, or other investigative information in the possession of or received or gathered by the physician assistant board or a board employee or agent relating to a license holder, a license application, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the board or a board employee or agent involved in license holder discipline.

Occ. Code § 204.254. You seek to withhold responsive information relating to physician assistants on the basis of section 204.054. You state that the medical board maintains that information in its licensure files. You do not indicate that section 204.255 of the Occupations Code authorizes the release of the information in question to this requestor. We note that section 204.254 is applicable to investigative information held, received, or gathered by the Texas Physician Assistant Board, which is an advisory board to the medical board. *See id.* §§ 204.002(2), 204.051(a). We assume that the medical board maintains the information relating to physician assistants on behalf of the physician assistant board. *See id.* 204.102 (medical board shall adopt rules to regulate physician assistants). Based on that assumption, we conclude that the medical board must withhold the information at issue that relates to physician assistants under section 552.101 of the Government Code in conjunction with section 204.254 of the Occupations Code.

Lastly, we address your claim under section 552.101 in conjunction with section 183.8 of title 22 of the Texas Administrative Code. Chapter 183 of title 22 is applicable to acupuncture. Section 183.8 provides in part:

(a) [] All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received, or gathered by the board shall be confidential and no employee, agent, or member of the board may disclose information contained in such files[.]

22 T.A.C. § 183.8(a). You seek to withhold responsive information relating to acupuncturists on the basis of section 183.8(a). You state that the information in question is maintained in the medical board's licensure files. *See* Occ. Code §§ 205.102 (medical board shall provide administrative and clerical employees as necessary to enable Texas State Board of Acupuncture Examiners to administer Occ. Code ch. 205), .202 (authorizing acupuncture board to delegate authority to medical board employees to issue licenses under Occ. Code ch. 205). You do not inform us, however, of any statutory authority that would permit either the medical board or the acupuncture board to promulgate a rule that makes information confidential for the purposes of the Act. *See id.* § 205.101(b) (acupuncture board does not have independent rulemaking authority; adoption of its rules is subject to medical board approval). A governmental body may not promulgate a rule that designates information as being confidential, so as to bring the information within the scope of section 552.101 of the Government Code, unless the governmental body has been given specific statutory authority to do so. *See* Open Records Decision Nos. 594 at 3 (1991) (requiring statutory authority before governmental body may deem information

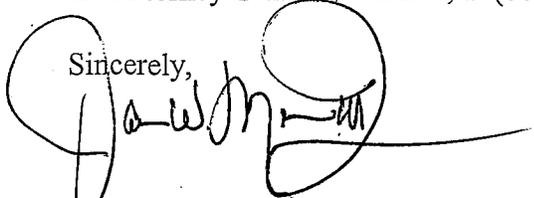
confidential), 484 at 2 (1987) (governmental bodies may not by rule or contract render information confidential for purposes of Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976); *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982). We therefore conclude that the medical board may not withhold any responsive information relating to acupuncturists under section 552.101 of the Government Code on the basis of section 183.8(a) of title 22 of the Texas Administrative Code.

In summary: (1) the information at issue that relates to the issuance of licenses to physicians must be withheld pursuant to section 164.007(c) of the Occupations Code and the previous determination issued to the medical board in Open Records Letter No. 2006-14198; and (2) the information at issue that relates to physician assistants must be withheld under section 552.101 of the Government Code in conjunction with section 204.254 of the Occupations Code. The rest of the responsive information must be released.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 366689

Enc: Submitted documents

c: Requestor
(w/o enclosures)