



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

Ms. Michelle Hunter
Executive Director
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

OR2010-17528

Dear Ms. Hunter:

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# 399345.

The State Bar of Texas (the "State Bar") received seventeen requests for information pertaining to attorneys licensed with the State Bar. We understand you have released information to some of the requestors, including attorney names, firm/employer, business address, business telephone number, law school, graduation year, and birth year. You claim that access to some of the requested information is not governed by the Act pursuant to section 552.0035 of the Government Code. Alternatively, you claim that portions of the requested information are excepted from disclosure under sections 552.1176 and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.¹ We have also considered comments submitted by two of the requestors. *See*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the State Bar's argument that portions of the requested information are not subject to the Act. The Act applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." *Id.* § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." *Id.* § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act but is instead "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). In support of its claim that the requested information is not subject to the Act, the State Bar refers to the decision in *Abbott v. State Bar of Texas*, 241 S.W.3d 604 (Tex. App.—Austin 2007, pet. denied). In *Abbott v. State Bar of Texas*, the court addressed whether public access to certain State Bar membership records was governed by the Act. The court concluded that the State Bar maintains its membership records "for the judiciary" and thus, pursuant to section 552.0035 of the Government Code, public access to membership records maintained by the State Bar for the Texas Supreme Court was not governed by the Act, but instead was governed by rule 12 of the Rules of Judicial Administration. *Abbott v. State Bar of Texas*, 241 S.W.3d 604, 609 (Tex. App.—Austin 2007, pet. denied). Thus, to the extent the information at issue constitutes membership records maintained by the State Bar for the Texas Supreme Court, then, pursuant to section 552.0035 and the ruling in *Abbott v. State Bar of Texas*, we conclude this information is maintained for the judiciary, and public disclosure of the information at issue is governed by rule 12 of the Rules of Judicial Administration. *See id.*; Gov't Code § 552.0035(a). This office does not address questions under those rules. *See* Tex. R. Jud. Admin. 12.9 (providing procedures for appeal of denial of access to judicial records with the Administrative Director of the Office of Court Administration); Gov't Code § 552.306 (Attorney General decides questions under the Act).

However, to the extent the requested information does not consist of membership records maintained by the State Bar for the Texas Supreme Court, we conclude that the ruling in *Abbott v. State Bar of Texas* is not applicable, and thus, this information is not maintained for the judiciary. Accordingly, it is subject to the Act, and we will address your remaining arguments against disclosure of this information.

You state that a portion of the requested information is excepted from disclosure under section 552.1176 of the Government Code, which provides:

(a) Information that relates to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law in this state that is maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if the person to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the [State Bar] of the person's choice, in writing or electronically, on a form provided by the state bar.

Gov't Code § 552.1176. Thus, section 552.1176 excepts from disclosure the following information the State Bar maintains under chapter 81 of the Government Code: home address, home telephone number, e-mail address, social security number, or date of birth of an attorney who notifies the State Bar of his or her choice to restrict access to that information. Gov't Code § 552.1176. We understand that the requested information is maintained by the State Bar under chapter 81 of the Government Code. Thus, to the extent the attorneys at issue elect to restrict public access to their information, the State Bar must withhold the requested home addresses, home telephone numbers, and e-mail addresses under section 552.1176 of the Government Code. To the extent these individuals do not notify the State Bar of their choice to restrict public access to their information, the State Bar may not withhold the information at issue under section 552.1176.

The State Bar also argues that the application of section 552.1176 to an attorney's information should be made at the time the information is produced rather than on the date of the request. We note that section 552.1176 only requires that the attorney notify the State Bar of his or her choice to restrict access in writing or electronically. *Id.* § 552.1176(a)(2). Thus, the statute does not place a restriction on the time period in which the notification required under section 552.1176(a)(2) must occur. *Id.* Accordingly, the determination of whether an attorney's information is confidential under section 552.1176 must be made when the records are produced.

Next, we address your claim under section 552.137 for the e-mail addresses of attorneys who do not choose confidentiality under section 552.1176. Section 552.137 of the Government Code provides in relevant part:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract;

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public; or

(5) provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of this code, or receiving orders or decisions from a governmental body.

Id. § 552.137(a)-(c). Thus, unless an exception under subsection (c) of the statute applies, an e-mail address of a member of the public provided for the purpose of communicating electronically with a governmental body is confidential. *Id.* § 552.137(a). We note section 552.137 does not apply to a government employee or official's work e-mail address because such an address is not that of the employee or official as a "member of the public" but is instead the address of the individual as a governmental employee or official. Although the September 20, 2010, requestor asserts that section 552.137 does not apply to the e-mail addresses of State Bar members, we note the exceptions in section 552.137(c) are not applicable in this case. Therefore, if the remaining e-mail addresses are not a government employee or official's work e-mail address, then unless the owners have affirmatively consented to their public release, the State Bar must withhold the remaining e-mail addresses under section 552.137 of the Government Code, regardless of whether the attorney has

chosen to restrict access to their information under section 552.1176 of the Government Code.²

Next, we note portions of the information at issue may relate to employees of a district attorney's office or a county attorney's office. Section 552.1175 provides in part:

(a) This section applies only to:

...
(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(5), (b). Thus, to the extent that the information at issue pertains to the individuals to whom section 552.1175(a) applies and who elect to restrict access in accordance with section 552.1175(b), the State Bar must withhold the requested home addresses and home telephone numbers under section 552.1175 of the Government Code.

Finally, the August 20, 2010, requestor claims the information at issue may not be withheld from him, because he requested the information as a member of the State Bar, and not as a "member of the public." We disagree. We note that the requestor is seeking this information as a private citizen rather than in an official capacity that would entitle him to obtain this

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. We also note that in Open Records Letter 2002-2107 (2002), this office granted the State Bar a previous determination to withhold non-government e-mail addresses belonging to members of the public under section 552.137 of the Government Code.

information. *See* Attorney General Opinion JM-119 (1983) (concluding when trustee of community college district, acting in his official capacity, requests information maintained by district, he is not member of "public" for purposes of the Act). Accordingly, we determine that the requestor is a "member of the public" for the purposes of this request. Further, the requestor has not cited to any specific provision, nor are we aware of any such law, that provides him with a right of access to the submitted information. Thus, we conclude this requestor does not have a right of access to the information at issue by virtue of his State Bar membership.

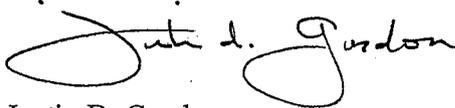
In summary, to the extent the information at issue constitutes membership records maintained by the State Bar for the Texas Supreme Court, the information is not subject to the Act, but is governed instead by rule 12 of the Rules of Judicial Administration. To the extent the information at issue does not constitute membership records the State Bar maintains for the Texas Supreme Court, we make the following determinations under the Act. To the extent the individuals whose information is at issue notify the State Bar of their choice to restrict access to their information, the State Bar must withhold the requested home addresses, home telephone numbers, and e-mail addresses under section 552.1176 of the Government Code. To the extent the remaining e-mail addresses are not government e-mail addresses, the State Bar must withhold the remaining e-mail addresses under section 552.137 of the Government Code. To the extent that the remaining information pertains to individuals that fall within the scope of section 552.1175(a) and elect to restrict access to the marked information in accordance with section 552.1175(b), the requested home addresses and home telephone numbers must be withheld under section 552.1175 of the Government Code. The remaining information must be released.

You also ask this office to issue a previous determination pertaining to the records at issue. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). As noted above, in Open Records Letter 2002-2107 (2002), this office already granted the State Bar a previous determination to withhold non-government e-mail addresses belonging to members of the public under section 552.137 of the Government Code. However, after due consideration, we have decided to grant the State Bar a previous determination with respect to section 552.1176 and section 552.1175 of the Government Code. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) for information maintained by the State Bar that is confidential under section 552.1176 and section 552.1175 of the Government Code. The State Bar may consider this ruling a previous determination for such information for as long as the elements of law, fact, and circumstances on which this ruling is based do not change so as to no longer support our conclusion. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 at 7 (2001).

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,

A handwritten signature in black ink that reads "Justin D. Gordon". The signature is written in a cursive style with a large, looping initial "J".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 399245

Enc. Submitted documents

c: Requestors
(w/o enclosures)