



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 22, 2011

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

OR2011-08927

Dear Mr. Meador:

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# 421400 (DSHS ORR #18801).

The Texas Department of State Health Services (the "department") received a request for all documents related to the disciplinary action taken against a named individual on a specified date. You state that the department will release some responsive information to the requestor. 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.

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 confidentiality provisions. You assert that the information at issue is made confidential by section 502.2045(h) of the Occupations Code. Section 502.2045 provides in pertinent part:

(h) All information and materials subpoenaed or compiled by the [Board of Examiners of Marriage and Family Therapists (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) marriage and family therapist 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 Chapter 552, Government Code.

Occ. Code § 502.2045(h), (i). You state the submitted information was “gathered and/or created in response to complaints and investigations occurred.” You also inform us none of the exceptions to confidentiality under section 502.2045(h) are applicable in this instance. Furthermore, none of the submitted information appears to fall within the scope of section 502.2045(i). We therefore conclude the information you have submitted is confidential under section 502.2045(h) of the Occupations Code and must be withheld under section 552.101 of the Government Code.

You also ask this office to issue a previous determination permitting the department to withhold information subject to section 502.2045(h) of the Occupations Code without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) for information held by the department that is made confidential under section 502.2045(h) of the Occupations Code and must be withheld under section 552.101 of the Government Code on that basis. We note that you must only withhold this type of information when none of the exceptions to confidentiality under section 502.2045(h) apply. Furthermore, in accordance with section 502.2045(i) of the Occupations Code, the

department may not withhold the nature of any charges filed, disciplinary proceedings of the board, or any final disciplinary actions. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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](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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/bs

Ref: ID# 421400

Enc. Submitted documents

c: Requestor  
(w/o enclosures)