



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2012

Ms. Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
333 Guadalupe, Suite 3-825
Austin, Texas 78701-3942

OR2012-05921

Dear Ms. Yarbrough:

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# 451597.

The Texas Board of Chiropractic Examiners (the "board") received a request for licensing documents, disciplinary records, and investigative files concerning a named individual, including a specified investigation.¹ You state the Agreed Final Order from one investigation is being released. You state the board will redact e-mail addresses as permitted by Open Records Decision No. 684 (2009).² You state the requested information pertaining to another investigation was previously destroyed in accordance with the board's document retention

¹You provide documentation showing the board received clarification of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

policy.³ You claim most of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.⁴

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes including section 201.206 of the Occupations Code which provides in part:

(a) The board’s investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

...

(d) Notwithstanding Subsection (a), the board may:

(1) disclose a complaint to the affected license holder; and

(2) provide to a complainant the license holder’s response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

Occ. Code § 201.206(a), (d). Section 201.206 applies to “all investigations pending or opened on or after September 1, 2003.” Act of May 9, 2003, 78th Leg., R.S., ch. 329, § 7(b), 2003 Tex. Gen. Laws 405, 1407. You state the investigative files at issue were pending on or opened after September 1, 2003. You inform us the submitted information consists of the investigation files of a chiropractor licensed by the board, which we understand the board maintains pursuant to section 201.204. *See* Occ. Code § 201.204 (setting forth the board’s record keeping requirements with respect to complaints filed with the board). Thus, based on your arguments and our review, we find the information at issue is part of the board’s investigation files and section 201.206 governs release of this information. We have no indication the requestor is entitled under section 201.206(d) to any of the information at issue. Thus, we find Exhibits B, C, D, and the information you have

³The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1(1990).

⁴We assume 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 those records contain substantially different types of information than that submitted to this office.

indicated in Exhibit E must be withheld under section 552.101 of the Government Code in conjunction with section 201.206 of the Occupations Code. The remaining information must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 451597

Enc. Submitted documents

c: Requestor
(w/o enclosures)