



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2013

Dr. Bill Nemeth
Medical Director
Texas Physician Health Program
333 Guadalupe, Suite 2-520
Austin, Texas 78701

OR2013-06382

Dear Dr. Nemeth:

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# 485029.

The Texas Physician Health Program (the "program") received a request for specified test results related to the requestor's client. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses section 167.010 of the Occupations Code, which is part of the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 167.010 of the Occupations Code governs the confidentiality of records held by the program and provides:

- (a) Each referral, proceeding, report, investigative file, record, or other information received, gathered, created, or maintained by the program or its employees, consultants, work site monitors, or agents relating to a physician or physician assistant is privileged and confidential and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other means of legal compulsion for release to any person except as provided by this chapter.

(b) Notwithstanding Subsection (a), the program may report to the [Texas Medical Board (the "board")] or the physician assistant board, as appropriate, the name and pertinent information relating to impairment of a physician or physician assistant.

(c) Notwithstanding Subsection (a), the program shall make a report to the board or the physician assistant board, as appropriate, regarding a physician or physician assistant if the medical director or the governing board determines that the physician or physician assistant poses a continuing threat to the public welfare. If requested by the board or the physician assistant board, a report under this subsection must include all information in the possession or control of the program.

Id. § 167.010. You state the submitted information consists of records maintained by the program relating to the requestor's client, a physician. Further, you state none of the exceptions apply to this information. Based on your representations and our review, we find the submitted information is confidential under section 167.010 of the Occupations Code. Accordingly, the program must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 167.010 of the Occupations Code.¹

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 485029

Enc. Submitted documents

c: Requestor
(w/o enclosures)