



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2014

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2014-01819

Dear Ms. Pemberton:

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# 517039 (Killeen ID# W012313).

The City of Killeen (the "city") received a request for two specified incident reports. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim incident report number 12-015719 is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 12-015719 relates to a pending criminal prosecution. Based upon your representation and our review, we conclude that the release of incident report number 12-015719 would interfere with the detection,

investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to incident report number 12-015719.

Next, you claim incident report number 12-015181 is excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report number 12-015181 pertains to an investigation by the city's police department that has concluded and that did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is applicable to incident report number 12-015181.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state has been released, the city may withhold incident report number 12-015719 under section 552.108(a)(1) of the Government Code and incident report number 12-015181 under section 552.108(a)(2) of the Government Code.¹

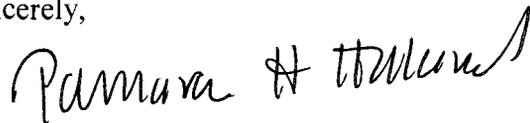
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹Although basic information includes an arrestee's social security number, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). We note, however, the requestor has a right of access to her own social security number. *See generally id.* § 552.023.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Tamara H. Holland". The signature is written in black ink and is positioned above the typed name.

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/som

Ref: ID# 517039

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Cause No. D-1-GV-12-000232

DEPARTMENT OF STATE HEALTH
SERVICES AND TEXAS MEDICAL
BOARD,

Plaintiffs,

v.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,

Defendant.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

261st JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Filed in The District Court
of Travis County, Texas

JUN 25 2014
3:00 P.M.
At
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Texas Government Code chapter 552, in which the Department of State Health Services (DSHS) and the Texas Medical Board (TMB), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiffs, DSHS and TMB, and Greg Abbott, Attorney General of Texas, arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit A, and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325 (d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Texas Government Code section 552.325(c), the Attorney General sent certified letters to the two requestors in this case, Ms. Andrea Ball and Mr. Paul Weber, on _____, 2014, informing them of the setting of this matter on the uncontested docket on this date. The requestors were informed of the parties' agreement that DSHS must withhold the information at issue. The requestors were also informed of their right to intervene in the suit to contest the withholding of this

information. A copy of the certified mail receipts are attached to this judgment as Exhibit B.

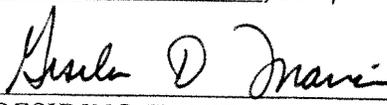
Neither requestor has filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

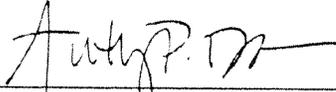
1. DSHS, TMB, and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the information at issue, which consists of "Exhibit D" to DSHS's briefing to the Attorney General during the letter ruling process, is confidential under Texas Government Code section 552.101 in conjunction with section 160.007 of the Occupations Code.
2. DSHS must withhold from the requestor the information described in Paragraph 1 of this order.
3. All court cost and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between DSHS, TMB, and the Attorney General and is a final judgment.

SIGNED the 25 day of June, 2014.



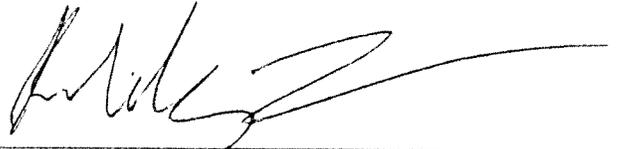
PRESIDING JUDGE

AGREED:



ANTHONY BOLSON
State Bar No. 24082198
Assistant Attorney General
Financial Litigation, Tax and Charitable
Trusts Division
P.O. Box 12548
Austin, Texas 78711-2548
Telephone: (512) 475-2219
Facsimile: (512) 477-2348

ATTORNEY FOR PLAINTIFFS



KIMBERLY FUCHS
State Bar No. 24044140
Chief, Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167

ATTORNEY FOR DEFENDANT

EXHIBIT A

Cause No. D-1-GV-12-000232

DEPARTMENT OF STATE HEALTH	§	IN THE DISTRICT COURT
SERVICES AND TEXAS MEDICAL	§	
BOARD,	§	
<i>Plaintiffs,</i>	§	
v.	§	261st JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS
	§	

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between the Department of State Health Services (DSHS), the Texas Medical Board (TMB), and Greg Abbott, Attorney General of Texas (Attorney General). This Agreement is made on the terms set forth below.

Background

On November 16, 2011, DSHS received a written request for information from Ms. Andrea Ball under the Public Information Act (PIA). The request was for information regarding a named individual. On November 18, 2011, Mr. Paul Weber made a request for the same information.

DSHS released some of the information, and asked for an open records ruling from the Attorney General, pursuant to the PIA, Tex. Govt. Code Section 552.301, for some of the information. DSHS also notified TMB that some of the information responsive to the requests implicated TMB's rights. Both DSHS and TMB provided briefing to the Open Records Division (ORD) arguing that some of the information should be withheld.

The Attorney General issued Letter Ruling OR2012-01819 (2012) in response to DSHS's request. The ruling concluded, in pertinent part, that some of the information was excepted from disclosure under Texas Government Code section 552.101 in conjunction with section 261.201 of the Family Code, but DSHS and TMB had not shown Texas Government Code section 552.101 in conjunction with section 164.007 of the Occupations Code applied to the remaining information, so the remaining information needed to be disclosed to the requestors.

DSHS and TMB disputed the ruling and filed a lawsuit, styled Cause No. D-1-GV-12-000232, *Department of State Health Services and Texas Medical Board v. Greg Abbott, Attorney General of Texas*, In the 261st Judicial District Court of Travis County, Texas (this lawsuit), to preserve their rights under the PIA.

DSHS submitted additional information to the Attorney General explaining why 160.007 of the Occupations Code makes the information confidential. DSHS established that the information at issue was maintained for use by a Privileging and Credentialing Committee; therefore the information is confidential under Texas Government Code section 552.101 in conjunction with section 160.007 of the Occupations Code.

Tex. Govt. Code Section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. The information at issue, which consists of "Exhibit D" to DSHS's briefing to the Attorney General during the letter ruling process, is confidential under Texas Government Code section 552.101 in conjunction with section 160.007 of the Occupations Code.
2. DSHS must withhold from the requestor the information described in Paragraph 1 of this Agreement.
3. DSHS, TMB, and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor. The Court, in entering final judgment, will attach this Settlement Agreement as Exhibit "A."
4. The Attorney General agrees that he will also notify the requestors, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of their right to intervene to contest DSHS's right to withhold the information.
5. If a requestor intervenes to contest the withholding, a final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.
6. Each party to this Agreement will bear its own costs, including attorney fees relating to this litigation.
7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

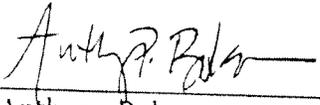
8. DSHS warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that DSHS has against the Attorney General and TMB arising out of the matters described in this Agreement.

9. TMB warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that TMB has against the Attorney General and DSHS arising out of the matters described in this Agreement.

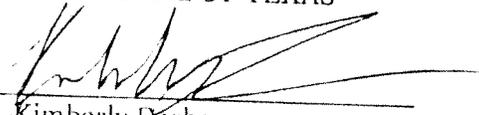
10. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against DSHS and TMB arising out of the matters described in this Agreement.

11. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

DEPARTMENT OF STATE HEALTH
SERVICES AND TEXAS MEDICAL
BOARD

By: 
Name: Anthony Bolson
Title: AAG, Financial Litigation, Tax,
and Charitable Trusts Division
Date: 6/4/14

GREG ABBOTT,
ATTORNEY GENERAL OF TEXAS

By: 
Name: Kimberly Puchs
Title: AAG, Administrative Law
Division
Date: 6/4/14