



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 28, 2014

Mr. Marc Allen Connelly  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2014-09085

Dear Mr. Connelly:

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# 524292.

The Texas Department of State Health Services (the "department") received a request for information pertaining to a specified complaint. You state pursuant to the previous determination in Open Records Decision No. 684 (2009), the department has redacted personal e-mail addresses subject to section 552.137 of the Government Code.<sup>1</sup> You state the department has provided or will provide the requestor with some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We understand you to also claim the release of the submitted information may affect the interests of the Texas Medical Board (the "board"). Accordingly, we understand you have notified the board of the instant request and of the board's right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why the information should or should not be released). We have not received any comments from

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

the board. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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. Section 552.101 encompasses information made confidential by other statutes, such as section 164.007 of the Occupations Code. Section 164.007(c) provides:

Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). By its terms, section 164.007(c) makes information confidential when in the possession of the board, its employees, or agents. The department asserts the submitted information consists of a complaint submitted to the board. In this instance, however, the submitted information is in the possession of the department. Furthermore, the department is not acting as an employee or agent of the board in maintaining these records. Therefore, we conclude section 164.007(c) does not make the submitted information confidential in this instance. Consequently, the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code. As you raise no other exceptions to disclosure, the submitted information must be released.

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/>

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<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

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

Sincerely,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 524292

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Texas Medical Board - Open Records  
P.O. Box 2018  
Austin, Texas 78768  
(w/o enclosures)