



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2014

Mr. J. Randel Hill
General Counsel
Texas State Board of Public Accountancy
333 Guadalupe, Tower III Suite 900
Austin, Texas 78701

OR2014-09297

Dear Mr. Hill:

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# 524357.

The Texas State Board of Public Accountancy (the "board") received a request for "[a]ny document that reports, summarizes, compiles[,] or comprises the names, addresses, telephone number[s,] and [e-mail] addresses of any member [Certified Public Accountant] firms that are individuals, partnerships[,] or firms, that claim exemption from the [b]oard's peer review as set forth in [section 527.4(b) of title 22 of the Texas Administrative Code]." You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered arguments from an attorney for an interested party, the Texas Association of Certified Public Accountants (the "association"). See Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

¹Regardless of whether the board failed to comply with section 552.301 of the Government Code in requesting a ruling, we note section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. See Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the board's arguments under section 552.101.

Initially, we note the board seeks to withdraw its request for an open records decision because the board asserts the request for information was withdrawn by operation of law because the requestor failed to timely respond to a cost estimate for providing the requested records. Upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615(a) of the Government Code. *See id.* § 552.2615(a). Accordingly, we conclude the request for information was not withdrawn by operation of law. *See id.* § 552.2615(b).

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. Chapter 901 of the Occupations Code, the Public Accountancy Act, addresses the licensing and regulation of accountants. *See Occ. Code ch. 901.* Section 901.160 of the Occupations Code provides, in pertinent part, as follows:

(a) The board shall make available at the board’s offices in Austin any file maintained or information gathered or received by the board from a third party regarding a license applicant or current or former license holder for inspection by the applicant or license holder during normal business hours.

(b) A license applicant or current or former license holder may authorize the board in writing to make available for inspection by a designated person or by the public any information gathered or received by the board from a third party regarding the applicant or license holder.

(c) Except on written authorization as provided by Subsection (b), the following information gathered or received by the board is confidential and not subject to disclosure under [the Act]:

...

(2) information regarding the qualifications of an applicant or firm license holder to be issued a firm license as a certified public accountancy firm[.]

Id. § 901.160(a), (b), (c)(2). Pursuant to section 901.401, each certified public accountancy firm office or firm of public accountancy must hold a license issued under chapter 901. *See id.* § 901.401(b). Subchapter H of chapter 901 addresses firm license requirements. *See id.* § 901.351-.355. Pursuant to section 901.351, a firm may not provide attest services unless the firm holds a firm license issued under subchapter H. *See id.* § 901.351. Further, pursuant to section 527.4 of title 22 of the Texas Administrative Code, a firm that performs attest services or any accounting or auditing engagements must be enrolled in a peer review program. *See 22 T.A.C. § 527.4(a)* (providing for enrollment and participation of firms

licensed or registered with board in peer review program); *see also* Occ. Code § 901.159(a) (requiring board to establish peer review program to review work of certified public accountancy firm). Section 527.4(b) requires a firm that does not perform attest services or any accounting or auditing engagements to annually request in writing an exemption from the peer review program from the board. *See* 22 T.A.C. § 527.4(b). Section 515.3 of title 22 of the Texas Administrative Code addresses license renewals for firm offices and subsection 515.3(b)(4) states if a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has met the peer review requirements defined in chapter 527.

You explain to qualify for licensure a CPA firm must demonstrate in its application for licensure renewal that it is enrolled in the peer review program or demonstrate it is not required to be enrolled in the peer review program. You inform us failure to provide either of these demonstrations in the licensure application will result in the board determining the application does not qualify for a license and a license will not be issued. You argue because the requestor restricted his request to only those firms seeking an exemption from peer review, the submitted information pertains to the qualifications of a firm license holder to be issued a firm license; therefore, the submitted information is subject to section 901.160 of the Occupations Code.

The association argues the requested information is not confidential because a licensee's name and address are not qualifications. The association cites Open Records Decision No. 351 (1982) in advancement of its argument. In Open Records Decision No. 351, the request was for the names and addresses of individuals and candidates whose examination papers went missing. ORD 351 at 1. The board argued the names and addresses at issue were confidential under the statutory predecessor to section 901.160. Open Records Decision No. 351 concluded the names and addresses of these individuals were not qualifications. *Id.* at 4. We note, in this instance, the requestor does not only seek the names and addresses of firm license holders. Rather, the requestor seeks those names, addresses, telephone numbers, and e-mail addresses of the license holders who seek exemption from peer review. Thus, we find the request seeks information regarding the qualifications of a firm license holder to be issued a firm license. Additionally, we find the requestor is not an individual who is entitled to the information under section 901.160(a)(1) and the exception to confidentiality in section 901.160(b) does not apply in this instance. Therefore, the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 901.160 of the Occupations Code.²

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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

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 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# 524357

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Wilfred Navarro
NAVARROLAW, P.L.L.C.
3736 Bee Cave Road, Suite 1-168
Austin, Texas 78746
(w/o enclosures)