



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2014

Ms. Maureen E. Ray
Special Administrative Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

OR2014-10373

Dear Ms. Ray:

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# 526207.

The State Bar of Texas (the "state bar") received a request for three categories of information pertaining to a named counsel for the Texas Commission for Lawyer Discipline (the "CFLD"). You claim some of the requested information is not subject to the Act and some of the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state the information responsive to categories one and two of the request is created, maintained, or held by the CFLD, and thus, is not subject to the Act. We note rule 4.09 of the Texas Rules of Disciplinary Procedure states the CFLD is not a governmental body "as that term is defined in section 551.001 of V.C.T.A., Government Code, and is not subject to either the provisions of the Open Meetings Act or the Open Records Act." See TEX. R. DISCIPLINARY P. 4.09. Accordingly, we agree the CFLD is not subject to the Act, and the information responsive to categories one and two of the request need not be released in response to this request pursuant to rule 4.09 of the Texas Rules of Disciplinary Procedure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. Gov’t Code § 552.101. You assert the information responsive to category three of the request is confidential and privileged under rule 2.16(A) of the Texas Rules of Disciplinary Procedure.¹ Rule 2.16 pertains to the confidentiality of disciplinary proceedings and associated records and provides that “[a]ll members and staff of the Office of Chief Disciplinary Counsel, board of Disciplinary Appeals[,] Committees, and Commission shall maintain as confidential all Disciplinary Proceedings and associated records,” except by court order or as otherwise provided in rule 2.16. TEX. R. DISCIPLINARY P. 2.16(A), *reprinted in* Gov’t Code tit. 2, subtit. G, App. A-1. Section 81.033(a) of the Government Code provides that:

[a]ll records of the state bar, except for records pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure, and records pertaining to the Texas Board of Legal Specialization, are subject to Chapter 552 [of the Government Code].

Gov’t Code § 81.033(a). You inform us the information at issue pertains to a grievance investigation and pending disciplinary proceeding against an attorney. Based on your representations and our review, we agree that the information at issue is confidential under rule 2.16(A). We therefore conclude that, pursuant to section 81.033(a) of the Government Code, the information responsive to category three of the request is not subject to the Act and need not be released to the requestor.²

In summary, the information responsive to categories one and two of the request is not subject to the Act and need not be released in response to this request pursuant to rule 4.09 of the Texas Rules of Disciplinary Procedure. Pursuant to section 81.033(a) of the Government Code, the information responsive to category three of the request is not subject to the Act and need not 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.

¹We note that the rules of the state bar have the same effect as statutes. *See Board of Law Exam’rs v. Stevens*, 868 S.W.2d 773 (Tex. 1994); *see also State Bar v. Wolfe*, 801 S.W.2d 202, 203 (Tex. App.—Houston [1st Dist.] 1990, no writ); *State Bar v. Edwards*, 646 S.W.2d 543, 544 (Tex. App.—Houston [1st Dist.] 1982, writ ref’d n.r.e.).

²Because we dispose of this issue under section 81.033(a), we do not address your remaining claim under the Act.

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,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 526207

Enc. Submitted documents

c: Requestor
(w/o enclosures)