



January 30, 2015

Ms. Nycia Deal  
General Counsel  
State Board of Dental Examiners  
333 Guadalupe, Tower 3, Suite 800  
Austin, Texas 78701-3942

OR2015-01940

Dear Ms. Deal:

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# 554692.

The Texas State Board of Dental Examiners (the "board") received a request for records of a named individual. We understand you have released some responsive information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 467.007 of the Health and Safety Code, which makes confidential information related to peer assistance programs. Section 467.007 reads as follows:

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<sup>1</sup>We note the board failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). However, section 552.101 is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the board's violation of section 552.301 in requesting this decision.

(a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public. It is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments.

(b) Information that is confidential under Subsection (a) may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional;  
or

(5) to other health care personnel to the extent necessary to meet a health care emergency.

Health & Safety Code § 467.007. Additionally, section 467.005(c) provides “[a]n approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.” *Id.* § 467.005(c).

You state the submitted information is related to the named individual’s participation in a peer assistance program. We note the board is a licensing or disciplinary authority for purposes of chapter 467 of the Health and Safety Code. *See id.* § 467.001(4) (defining “licensing or disciplinary authority” for purposes of chapter 467). Thus, we understand the information at issue consists of information received, gathered, or maintained by an approved peer assistance program or a licensing or disciplinary authority under chapter 467 of the Health and Safety Code. You state none of the exceptions in section 467.007 or section 467.005(c) are applicable in this instance. Based on your representations and our

review, we find the submitted information is confidential pursuant to section 467.007 of the Health and Safety Code. Accordingly, the board must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 467.007(a) of the Health and Safety Code.

You ask this office to issue a previous determination similar to Open Records Decision No. 490 (1988) that addresses section 467.007 of the Health and Safety Code and the practices of the board, specifically. We decline to issue such a previous determination at this time. Accordingly, 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](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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 554692

Enc. Submitted documents

c: Requestor  
(w/o enclosures)