



February 26, 2015

Mr. Rob Blech
Assistant General Counsel
Texas Medical Board
P.O. Box 2018
Austin, Texas 78768-2018

OR2015-03794

Dear Mr. Blech:

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# 555305 (TMB Ref. No. 25140).

The Texas Medical Board (the "board") received a request for information pertaining to all physicians in Texas, including the physicians' e-mail addresses, telephone numbers, and the county where they practice.¹ You state the board will release some information to the requestor upon payment of costs. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹We note the board sought clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We 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.

Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. Section 156.006 of the Occupations Code provides in part:

(a) Each license holder shall submit to the board telephone numbers, fax numbers, and e-mail addresses, if available and as appropriate, that the board may use to contact the license holder in an emergency.

...

(d) The information provided by a license holder under this section is confidential and is not subject to disclosure under [the Act].

Occ. Code § 156.006(a), (d). You state the submitted physicians’ contact telephone numbers and e-mail addresses were provided to the board pursuant to section 156.006(a). Upon review, we find the board must withhold the physicians’ contact telephone numbers and e-mail addresses, which we have marked, under section 552.101 of the Government Code in conjunction with section 156.006(d) of the Occupations Code. However, we find you have not demonstrated how the remaining information you marked is confidential under section 156.006(d). Accordingly, the board may not withhold the remaining information under section 552.101 in conjunction with section 156.006(d).

You assert the remaining information at issue is subject to section 164.007 of the Occupations Code and section 552.139 of the Government Code. Section 552.101 of the Government Code also encompasses 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.

Id. § 164.007(c). We note the remaining information at issue is database information and includes physicians’ zip codes, years of birth, and places of birth. Upon review, we find you have failed to demonstrate the remaining information at issue consists of a complaint, adverse report, investigation file, other investigation report, or other investigative information for purposes of section 164.007(c). Furthermore, the remaining information at issue does not include information relating to the identity of, or a report made by, a physician

performing or supervising compliance monitoring for the board. Therefore, the remaining information is not confidential under section 164.007 of the Occupations Code, and the board may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.139 of the Government Code provides, in part, as follows:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a)-(b). Section 2059.055(b) of the Government Code provides the following, in pertinent part:

Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). Upon review, we find you have failed to demonstrate the remaining information at issue relates to computer network security or to the design, operation or defense of a computer network as contemplated by section 552.139(a), consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b),

or relates to computer network security or restricted information under section 2059.055. Thus, none of the remaining information may be withheld by the board under section 552.139 of the Government Code.

In summary, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 156.006(d) of the Occupations Code. The board must release the remaining information.

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

Sincerely,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 555305

Enc. Submitted documents

c: Requestor
(w/o enclosures)