



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 4, 2015

Ms. Lauren Dahlstein
Staff Attorney
State Board of Dental Examiners
333 Guadalupe, Tower 3, Suite 800
Austin, Texas 78701-3942

OR2015-18570

Dear Ms. Dahlstein:

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# 578292.

The Texas State Board of Dental Examiners (the "board") received a request for twelve categories of information pertaining to specified policies and procedures, specified forms used for handling complaints, and records regarding certain items discussed at a specified board meeting. You state the board does not have any information responsive to part of the request.¹ You also state the board will provide some of the requested information to the requestor. You inform us the board will redact certain information pursuant to section 552.117 of the Government Code, as permitted by section 552.024(c) of the Government Code, and section 552.137 of the Government Code, in accordance with Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* §§ 552.117, .024(c); *see id.* § 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

disclosure under sections 552.101, 552.107, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the board's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). In this instance, you state the board received the request for information on June 15, 2015. Accordingly, the board's ten-business-day deadline was June 29, 2015. This office received the board's request on July 2, 2015. The envelope in which you submitted the request for a ruling under section 552.301 does not bear a post meter mark, nor have you provided sufficient evidence to establish the request for a ruling was deposited in the interagency mail by June 29, 2015. *See id.* § 552.308(a), (b) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the board failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. The board claims sections 552.107(1) and 552.111 of the Government Code for some of the submitted information. However, these exceptions are discretionary in nature. They serve to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Consequently, the submitted information may not be withheld under section 552.107(1) or section 552.111 of the Government Code. However, because sections 552.101 and 552.137 can provide compelling reasons to withhold information, we will address the applicability of these exceptions to 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. Section 552.101 encompasses information made confidential by other statutes, including section 254.006 of the Occupations Code, which states:

(a) Except as provided by this section, the investigation files and other records of the board are public records and open to inspection at reasonable times.

(b) Investigation files and other records are confidential, except the board shall inform the license holder of the specific allegations against the license holder. The board may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency.

(c) The exception from public disclosure of investigation files and records provided by this section does not apply to the disclosure of a disciplinary action of the board, including:

- (1) the revocation or suspension of a license;
- (2) the imposition of a fine on a license holder;
- (3) the placement on probation with conditions of a license holder whose license has been suspended;
- (4) the reprimand of a license holder; or
- (5) the issuance of a warning letter to a license holder.

Occ. Code § 254.006. You state the information you have marked consists of the board's confidential investigative files and records of a complaint filed against a dentist licensed by the board. You state section 254.006(c) is not applicable to any of the information at issue. Therefore, based on your representations and our review of the information at issue, we conclude the information you have marked is confidential under section 254.006(b) of the Occupations Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code § 552.137(a)-(c)*. Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. One of the e-mail

addresses you have marked is an e-mail address that is maintained by a governmental entity for one of its officials or employees. Thus, the board may not withhold this e-mail address, which we have marked for release, under section 552.137 of the Government Code. The remaining e-mail addresses you have marked are not excluded by subsection (c). Therefore, with the exception of the e-mail address we have marked for release, the board must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the board must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 254.006(b) of the Occupations Code. With the exception of the e-mail address we have marked for release, the board must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/cbz

Ref: ID# 578292

Enc. Submitted documents

c: Requestor
(w/o enclosures)