



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 19, 2016

Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711-2157

OR2016-08826

Dear Mr. Bowman:

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# 606300 (TDLR #PIR-20160337).

The Texas Department of Licensing and Regulation (the "department") received a request for specified information pertaining to all active license holders with specified types of licenses under the Texas Board of Cosmetology during a specified time period. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.¹ We have also received and considered comments from the requestor. *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). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹We note regardless of whether the department complied with section 552.301 of the Government Code in requesting this decision, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See Gov't Code* §§ 552.007, .301, .302, 352.

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 those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the submitted information is not responsive to the instant request because it does not consist of the requested specified information pertaining to all active license holders with specified types of licenses under the Texas Board of Cosmetology during a specified time period. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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 section 51.207 of the Occupations Code, which provides, in relevant part:

(c) The department may satisfy any requirement under [chapter 51] or another law governing a program subject to regulation by the department to provide notice by delivering the notice by e-mail to the recipient’s last known e-mail address if the recipient has previously authorized the department to deliver the notice by e-mail. An e-mail address used under this subsection is confidential and is not subject to disclosure under Chapter 552, Government Code.

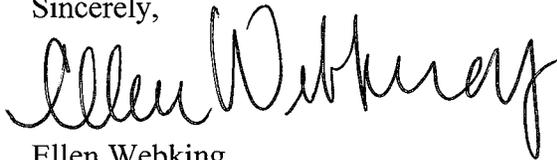
Occ. Code § 51.207(c). You argue the licensees’ e-mail addresses in the submitted information are confidential pursuant to section 51.207(c) of the Occupations Code. You state the primary purpose of obtaining the e-mail addresses is to send notices pertaining to license renewal and other compliance related matters. However, we are unable to determine if the department is satisfying any requirement under chapter 51 of the Occupations Code or another law governing a program subject to regulation by the department by sending the notices to the recipients. We are also unable to determine if the recipients whose e-mail addresses are at issue authorized the department to deliver the notices by e-mail. Therefore, we must rule conditionally. If the department is satisfying any requirement under chapter 51 of the Occupations Code or another law governing a program subject to regulation by the department by sending the notices and if the recipients whose e-mail addresses are at issue authorized the department to deliver the notices by e-mail, then the department must withhold those recipients’ e-mail addresses under section 552.101 of the Government Code in conjunction with section 51.207(c) of the Occupations Code. However, if the department is not satisfying any requirement under chapter 51 of the Occupations Code or another law governing a program subject to regulation by the department by sending the notices or the recipients whose e-mail addresses are at issue did not authorize the department to deliver the notices by e-mail, then the department may not withhold the e-mail addresses under section 552.101 of the Government Code in conjunction with section 51.207(c) of the Occupations Code. In that instance, as you raise no further exceptions to disclosure, the responsive information must be released.

You ask this office to issue a previous determination permitting the department to withhold licensees’ e-mail addresses under section 552.101 of the Government Code in conjunction

with section 51.207(c) of the Occupations Code without seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 606300

Enc. Submitted documents

c: Requestor
(w/o enclosures)