



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2016

Ms. Joan Howard Allen
General Counsel
Texas Physician Health Program
333 Guadalupe, Tower 2, Suite 520
Austin, Texas 78701

OR2016-20844

Dear Ms. Allen:

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# 626812.

The Texas Physician Health Program (the "program") received a request for information pertaining to the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. You also state release of the submitted information may implicate the interests of the Texas Medical Board (the "board"). Accordingly, you notified the board of the request for information and of its right to submit arguments stating why its information should not be released. *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 received comments from the board. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note we have marked some of the submitted information as non-responsive because it was created after the date of the program's receipt of the request. This ruling does not address the public availability of non-responsive information, and the program 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." Gov't Code § 552.101. This exception encompasses section 167.010 of the Occupations Code,

which is part of the Medical Practice Act, subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 167.010 of the Occupations Code governs the confidentiality of records held by the program and provides:

(a) Each referral, proceeding, report, investigative file, record, or other information received, gathered, created, or maintained by the program or its employees, consultants, work site monitors, or agents relating to a physician or physician assistant is privileged and confidential and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other means of legal compulsion for release to any person except as provided by this chapter.

(b) Notwithstanding Subsection (a), the program may report to the [board] or the physician assistant board, as appropriate, the name and pertinent information relating to impairment of a physician or physician assistant.

(c) Notwithstanding Subsection (a), the program shall make a report to the board or the physician assistant board, as appropriate, regarding a physician or physician assistant if the medical director or the governing board determines that the physician or physician assistant poses a continuing threat to the public welfare. If requested by the board or the physician assistant board, a report under this subsection must include all information in the possession or control of the program.

Id. § 167.010. You state the responsive information consists of records maintained by the program relating to a physician. Further, you state none of the exceptions apply to this information. Thus, we find the information at issue is confidential under section 167.010 of the Occupations Code. However, you ask whether section 552.023 of the Government Code applies to this information.

Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from required public disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. However, section 552.023 does not apply where interests other than the person's privacy are being protected. *See, e.g.*, Open Records Decision No. 565 (1990) (provisions of Medical Practice Act making medical records confidential intended to protect more than just privacy interests of patient). You state section 167.010 furthers the regulatory function of the board, as well as protects the privacy of participants in the program. *See* Occ. Code § 167.005(a) (stating purpose of program is to promote physician wellness and treatment of health conditions that can compromise ability to practice medicine with skill and safety). Upon review, we agree section 167.010 does not only protect privacy interests. Accordingly, we find section 552.023 does not provide the requestor with a right of access to this information in this case. *See, e.g.*, Open Records Decision Nos. 603 at 2-3 (1992) (no

section 552.023 right of access to information encompassed by Health and Safety Code section 142.009, which protects integrity of investigatory process as well as individual's privacy interests), 587 at 3-4 (1991) (finding predecessor to Family Code section 261.201 pertaining to child abuse investigations protects law enforcement, as well as privacy interests). Accordingly, the responsive information must be withheld under section 552.101 of the Government Code in conjunction with section 167.010 of the Occupations Code in its entirety.¹

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 626812

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.