



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 26, 1994

Ms. Rachael Martin  
Executive Director  
Board of Law Examiners  
P.O. Box 13486  
Austin, Texas 78711-3486

Open Records Decision No. 623

Re: Whether information concerning an applicant's moral character and fitness is subject to the Open Records Act, Government Code chapter 552, when the applicant requests information relating to his or her own moral character and fitness (RQ-386)

Dear Ms. Martin:

You have asked us to determine whether the Texas Open Records Act (the "act"), Government Code chapter 552,<sup>1</sup> requires you to release to an applicant for admission to the state bar information regarding the applicant's moral character and fitness. We conclude that the requested information is not subject to the act and that section 82.003 of the Government Code requires you to release all of the requested information to the applicant, except for information supplied by a person who objects to its disclosure.<sup>2</sup>

You have received a request for information relating to an application for admission to the state bar. The requestor--here, the applicant--seeks all records relating to the Board of Law Examiners' (the "board") investigation into his moral character and fitness so that he may prepare to defend himself in a public hearing on the matter.<sup>3</sup> You state that, upon reviewing the applicant's file, you have determined that he is entitled to

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<sup>1</sup>We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup>One of the documents you have submitted for our review, a memorandum dated April 15, 1992, does not appear to be responsive to the request because it does not relate to the board's investigation into the requestor's moral character and fitness.

<sup>3</sup>Rule XI(g) of the Rules Governing Admission to the Bar of Texas permits an applicant for admission to the state bar to request and receive from the board a written statement defining the specific nature of the unfavorable information that the board will present at a hearing on the applicant's moral character and fitness. Supreme Court of Texas, RULES GOVERNING ADMISSION TO THE BAR OF TEXAS Rule XI(g), Misc. Docket No. 92-0107 (1992) (*reprinted in TEXAS RULES OF COURT, STATE, 515 (West 1993); see infra* page 3 (discussing rule XI).

most of it and have offered him copies of the documents provided he pay copying charges and postage. However, you believe that section 552.111 of the act, which exempts from required public disclosure inter- or intra-agency information that consists of advice, opinion, or recommendation,<sup>4</sup> exempts those documents you have not yet made available to the requestor.<sup>5</sup>

Chapter 82 of the Government Code creates and governs the board. Section 82.003 states as follows:

(a) Except as provided by Subsections (b) and (c), the Board of Law Examiners is subject to the open records law . . . , and the open meetings law . . . .

(b) Examination questions that may be used in the future and examinations other than the one taken by the person requesting it are exempt from disclosure.

(c) Deliberations relating to moral character and fitness of an applicant may be closed to the public, and records relating to these subjects are exempt from disclosure. On the written request of an applicant, however, the applicant is entitled to have disclosed to the applicant records relating to the applicant's own moral character and fitness unless the person who supplied the information has requested that it not be disclosed. The board shall not inquire of a person who supplies information whether the person objects to disclosure nor inform the person of the right to object.

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<sup>4</sup>But see Open Records Decision No. 615 (1993) at 5 (concluding that statutory predecessor to Government Code section 551.111 exempts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting governmental body's deliberative or policymaking processes).

<sup>5</sup>In Open Records Decision No. 136 (1976) the attorney general determined that the board's entire file on an attorney, including the declaration of intention to study law, the application to take the bar examination, all letters of recommendation, and any investigative reports, correspondence, and other documents or information in the file, was not subject to the act because the board held the documents on behalf of the Texas Supreme Court. At the time this office issued Open Records Decision No. 136, the board was created and governed by V.T.C.S. article 304. Open Records Decision No. 136 at 1. Three years after that opinion was issued, the legislature amended article 304 (see Acts 1979, 66th Leg., ch. 594, § 1, at 1253), adding, among other provisions, subsection (f), which made the board generally subject to the open records and open meetings laws. The exceptions specified in article 304(f) are substantially the same as the exceptions in the codified version of article 304, § 82.003 of the Government Code. See Acts 1987, 70th Leg., ch. 148, § 3.01, at 593. The enactment of article 304(f), codified as Government Code section 82.003, supersedes Open Records Decision No. 136.

You inform us that, pursuant to the authority granted to it in section 82.022(b), the Texas Supreme Court issued an Order on July 7, 1987, designed to clarify the provisions of section 82.003.<sup>6</sup> The supreme court's order exempts from disclosure all moral character and fitness records and deliberations "except as provided in Rule XI of the Rules Governing Admission to the Bar of Texas." See *supra* note 3.

Under rule XI of the Rules Governing Admission to the Bar of Texas, "[i]f upon the record before it the Board is not satisfied that an applicant possesses the necessary good moral character or fitness, the Board shall set a time and place for a public hearing on the question of the applicant's moral character and fitness." At the public hearing, the board must provide the applicant with the opportunity "to be present in person and by attorney, to present evidence, to confront and to cross-examine adverse witnesses, and to present argument to the Board on the issues of law and fact." RULES GOVERNING ADMISSION TO THE BAR OF TEXAS Rule XI(d). In addition, if the applicant makes a proper request to the board within a reasonable time prior to the hearing, "the Board shall state in writing to the applicant the specific nature of the unfavorable information to be presented against the applicant." *Id.* Rule XI(g). For purposes of this opinion, we will assume that subsection (g)—and therefore the Supreme Court's order—authorizes the board to release to an applicant information gathered in the board's investigation of the applicant's moral character and fitness so that the applicant can know the specific nature of the unfavorable information the board will present at the public hearing.

You appear to contend that section 82.003(c) of the Government Code requires the board to disclose moral character and fitness information to an applicant, upon the applicant's written request, only if the act does not except the information from disclosure. We do not agree. As a general rule, exceptions to required public disclosure provided in the act are inapplicable to information that statutes other than the act expressly make public. Open Records Decision No. 525 (1989) at 3 (and opinions cited therein). Because section 82.003(c) expressly makes the requested information available to the applicant (unless the person who supplied the information has requested that it not be disclosed), none of the exceptions listed in the act applies.

Most of the information you have submitted for our review was provided by persons who apparently did not request that the board keep the information they supplied confidential. We note, however, that one person supplying information voiced concerns about possible repercussions. We believe this person, by voicing his or her concerns, requested that the board not disclose the supplied information. Accordingly, pursuant to

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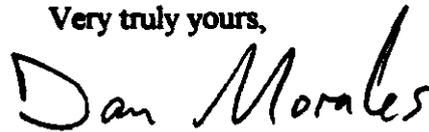
<sup>6</sup>The Texas Supreme Court's Order of July 7, 1987, clarifies § 82.029 of the Government Code, as well as § 82.003. Section 82.029(c) provides that all criminal history record information the board obtains "is privileged and confidential"; the board may not disclose criminal history record information "except on court order or consent of the applicant." Intentional or knowing release or disclosure of criminal history record information is a class B misdemeanor. Gov't Code § 82.029(d). The information before us here does not involve any criminal history information.

section 82.003(c), unless this person has indicated subsequently that the board may disclose the information, the board must not give the applicant the information this person supplied and must delete any references to this person and the information he or she supplied from all of the remaining documents.

**S U M M A R Y**

Information that is available to an applicant pursuant to section 82.003(c) of the Government Code is not subject to any of the exceptions listed in the Open Records Act, Government Code chapter 552. The Board of Law Examiners may withhold from an applicant information available to him or her pursuant to section 82.003 only if the person who supplied the information requested that the board not disclose it.

Very truly yours,



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