



Office of the Attorney General
State of Texas
March 18 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Arnaldo G. Garza
Director of Hearings
Texas State Board of Medical Examiners
P.O. Box 13562
Austin, Texas 78711-3562

OR92-96

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the act), article 6252-17a, V.T.C.S. Your request was assigned ID# 14664.

You have received a request to inspect certain documents in the possession of the Texas State Board of Medical Examiners (the board). The requestor enumerated sixteen different categories of documents to which he seeks access. You stated in your initial letter to us that you already have released the information requested in category three. We therefore need not consider that category.

Originally, you claimed that the information falling into categories one and eleven are excepted from disclosure under V.T.C.S. article 4495b, section 4.05(d), which section 3(a)(1) of the act incorporates. By letter dated February 10, 1992, the requestor informed us that he has withdrawn his request for the information in category one. You subsequently advised that the information requested in category eleven includes no information that is not also part of category one. Consequently, the issue of whether section 3(a)(1) of the act, incorporating V.T.C.S. article 4495b, section 4.05(d), excepts the information in categories one and eleven from disclosure is moot.

In categories two, four through ten, and twelve through sixteen listed in the initial request letter, the requestor asked for "every Board document" discussing various board policies and procedures, interpretations of various rules, and various adjudications. For instance, in his original letter, the requestor states that he seeks "[o]ther than contained in the Texas Administrative Code, every Board document

that discusses substantive rules of general applicability and statements of general policy or interpretation of general applicability relating to diet clinics," and "[e]very Board document describing interpretations of the phrase 'professional failure to practice medicine in an acceptable manner consistent with public health and welfare' concerning prescribing medications under private labels or under brand names." The initial request letter describes the remaining categories of information in similar terms.

Regarding the information requested in categories two, four through ten, and twelve through sixteen, you claim no exceptions to disclosure. Instead, you assert that "the remainder of the requests are so broad that the Board [of Medical Examiners] cannot discern what documents have been requested for inspection." You ask whether the board may apply any other statute to prevent "the abuse of an open records request which requires an enormous expense of personnel time to gather the material." A governmental body bears the burden of stating which exceptions apply to the requested information and why. Open Records Decision No. 542 (1990) at 2. If the governmental body fails to indicate an applicable exception, we presume that the requested information is public. Open Records Decision No. 565 (1990) at 10.

Indeed, the requestor states that he seeks to inspect only board interpretations of its enabling act, which he contends section 4(a)(2) of the Administrative Procedure and Texas Register Act (APTRA), V.T.C.S. article 6252-13a, expressly makes public. Section 4(a)(2) of APTRA states as follows:

In addition to other rulemaking requirements imposed by law, each agency shall:

....

(2) index, cross-index to statute, and make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions.

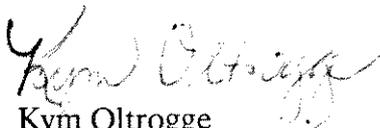
We cannot resolve a dispute about the scope of section 4(a)(2) of APTRA in an Open Records ruling. If the only documents the requestor seeks are documents APTRA expressly requires the board to make available for public inspection, any questions regarding reproduction costs must be answered under APTRA, not the

Open Records Act. *But see* Attorney General Opinion MW-163 (1980) (Open Records Act fees apply if specific law is silent).

With respect to those documents to which section 4(a)(2) of APTRA is inapplicable, under the Open Records Act, when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that the requestor may narrow the request. Open Records Decision Nos. 563 at 7, 561 at 8-9 (1990). Whether or not the requestor narrows the request, the Open Records Act generally does not permit the custodian of records to consider either the cost or the method of supplying requested information. Open Records Decision No. 467 (1987) at 5. However, if the requestor fails to narrow the request for information, the custodian may require the requestor to post bond as a condition precedent when the preparation of requested information is unduly costly and reproduction would cause "undue hardship" if costs were not paid. V.T.C.S. art. 6252-17a, § 11; *see also* Open Records Decision No. 467 at 6-7. If the custodian does not require the requestor to post bond, the custodian may charge the requestor at the time the request is delivered. Furthermore, if the public information the requestor seeks is intertwined with confidential information, or if the records custodian must conduct an extensive physical search to sort out confidential records, the custodian may charge the requestor for materials, overhead, and labor necessary to delete or separate the confidential information. Open Records Decision No. 488 (1988). Finally, a governmental body is not required to organize information in a particular way pursuant to the request of a member of the public. Attorney General Opinions JM-672 (1987) at 5; JM-292 (1984) at 5; Open Records Decision No. 467 (1987) at 2.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-96.

Yours very truly,


Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/GK/nhb

Enclosures: Documents

Ref.: ID# 14664
ID# 14733
ID# 14858
ID# 14902
ID# 15142
ID# 15143

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