



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1993

Mr. Timothy E. Weitz
Senior Attorney
Texas State Board of Medical Examiners
P.O. Box 149134
Austin, Texas 78714-9134

OR93-580

Dear Mr. Weitz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 20913.

The Texas State Board of Medical Examiners (the "board") received a written request from a physician for "a complete copy of the investigation of Case No. 92-0967." In this instance, the requestor is the subject of the investigation records in question. You contend that the requested records are made confidential by section 4.05(c)² of the Medical Practice Act, V.T.C.S. art. 4495b, and thus must be withheld pursuant to section 552.101 (former section 3(a)(1)) of the Open Records Act.

Section 552.101 of the Open Records Act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 4.05(c) of article 4495b, V.T.C.S., provides in part:

All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received or gathered by the board or its employees or agents relating to a licensee . . . are privileged and confidential and are not subject to discovery, subpoena, or other means of legal

¹The 73rd Legislature has repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. 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.

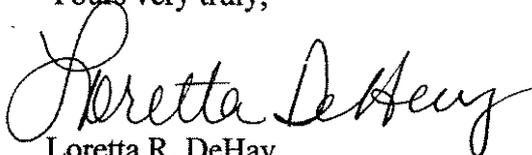
²Section 4.05(d) of the Medical Practice Act, which you originally cited in your brief to this office, is now found at section 4.05(c). *See* Acts 1993, 73d Leg., ch. 862, § 26, at 3396.

compulsion for their release *to anyone* other than the board or its employees or agents involved in licensee discipline. *Not later than 30 days after receiving a written request from a licensee who is the subject of a formal complaint initiated and filed under Section 4.03 or this Act* or from the licensee's counsel of record and subject to any other privileges or restrictions set forth by rule, statute or legal precedent, and unless good cause is shown for delay, the board shall provide the licensee with access to all information in its possession *that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint.* . . . (Emphasis added.)

The requested information is clearly confidential under this provision. It is apparent from the language of section 4.05(c) that until the board files a complaint against a licensee, the board's records of its investigations are not to be released to anyone, including the licensee involved.³ Although section 4.05(c) requires that the board grant to a physician or his attorney, with certain exceptions, "all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint," such right of access exists only after the board has initiated a complaint against the physician in question. As of this date, the board has not initiated such a complaint against the licensee/requestor. Consequently, the board is not authorized to release the requested records at this time.

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 contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

³We note that Open Records Decision No. 458, issued on February 13, 1987, reached the conclusion that the intent of former section 4.05(d) was to shield the identities of licensees against whom complaints are filed and that it did not protect non-identifying information. Former section 4.05(d), however, was amended later that same year to include the language that information is "confidential and [is] not subject to discovery, subpoena, or other means of legal compulsion for [its] release *to anyone* other than the board or its employees or agents involved in licensee discipline." Acts 1987, 70th Leg., ch. 596, § 9, at 2331 (emphasis added). The amending act also added language providing an exception from confidentiality for disclosure to law enforcement entities conducting criminal investigations. *Id.* Clearly the statute as amended is intended to protect more than the identity or privacy of the subject of a complaint. Consequently, the requestor does not have a special right of access to this information pursuant to section 552.023(b) (former section 3B) of the Open Records Act.

LRD/RWP/rho

Ref.: ID# 20913
ID# 21869

Enclosures: Submitted documents

cc: Dr. Oscar J. Gonzalez-Vera
Arena Tower Two, Suite 1920
7324 S.W. Freeway
Houston, Texas 77074
(w/o enclosures)