



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 27, 1994

Mr. C. Thomas Camp
Executive Director
Texas State Board of Dental Examiners
P.O. Box 13165
Austin, Texas 78711-3165

OR94-419

Dear Mr. Camp:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 24953.

The Texas State Board of Dental Examiners (the "board") has received a request for a certain investigative file. Specifically, the requestor seeks the board's most recent investigative file relating to Dr. William Wright. You have submitted the requested investigative file to us for review and claim that sections 552.101 and 552.103(a) of the Government Code except it from required public disclosure.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that section 2, V.T.C.S. article 4550, makes the requested information confidential. That provision provides as follows:

All of the records and files of the Texas State Board of Dental Examiners shall be public records and open to inspection at reasonable times, *except the investigation files* and records which shall be confidential and shall be divulged *only* to persons so investigated upon completion of said investigation.

V.T.C.S. art. 4550, § 2 (emphasis added).

Section 2, V.T.C.S. article 4550, makes the investigative files and records of the board confidential, regardless of whether they relate to open or closed investigations, with the exception that such records must be divulged to the subject of an investigation upon

completion of the investigation. The "investigative file," however, does not include correspondence between the board and licensees relating to informal conferences, proposed notice of hearings and charges, and agreed board orders. *See* Open Records Decision No. 474 (1987) (documents relating to Pharmacy Board's adjudicatory function as opposed to its investigatory function not confidential under analogous statute providing for confidentiality of investigative files). "Investigative file" for purposes of section 2, V.T.C.S. article 4550, includes only the actual complaints and other documents prepared for internal board use that relate to fact gathering by the board's staff to assess the validity of complaints. *Id.*

We have examined the information submitted to us for review. Some of the submitted records appear to relate to the board's adjudicatory functions, not its investigative functions. These records include correspondence between the board and Dr. Wright or his representatives relating to informal conferences, proposed notice of hearings and charges, and agreed board orders. Such information does not fall within the scope of section 2, V.T.C.S. article 4550. In addition, the submitted records include a copy of the licensee's annual dental registration and general licensing information that are considered "public records" under article 4550. Moreover, the information contained in these records is not related to the substance of the complaint. The remaining information, however, constitutes investigative files. The requestor here appears to be an attorney representing the subject of the investigations. We assume that Dr. Wright has expressly authorized his attorney to access the investigative file. Accordingly, we conclude that, upon completion of the investigation, the board must disclose the requested investigative file. Until such time, however, the board must withhold the requested investigative file under section 552.101 of the Government Code.

We also need address whether section 552.103(a) of the Government Code excepts the submitted non-investigative file information from required public disclosure. Section 552.103(a) excepts information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 (1990) at 5.

You claim that the requested information relates to pending litigation. As noted above, however, the non-investigative file information has already been made available to all parties to the pending litigation. Generally, when parties to litigation already have copies of the records or have inspected them pursuant to discovery or any other means, section 552.103(a) may no longer be invoked. Open Records Decision No. 597 (1991) (concluding that statutory predecessor to section 552.103 did not except basic information in offense report that was previously disclosed to defendant in criminal litigation); *see also* Open Records Decision Nos. 551 at 4; 511 at 5, 493 at 2 (1988); 349, 320 (1982). Thus, section 552.103 of the Government Code does not allow the board to withhold the non-investigative file information from required public disclosure. Except for information made confidential by section 2, V.T.C.S. article 4550, as noted above, the board must release the requested information.

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 contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 24953

Enclosures: Marked documents

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(w/o enclosures)