



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 14, 1995

Ms. Rebecca E. Forkner
Executive Director
Texas State Board of Examiners
of Psychologists
9101 Burnet Road, Suite 212
Austin, Texas 78758

OR95-1424

Dear Ms. Forkner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 26361.

The Texas State Board of Examiners of Psychologists (the "board") has received a request for "any and all information concerning Dr. [Jonathan] Morris, . . . including all personnel records, contracts, resumes, reference letters, investigation materials, and the professional file of Dr. Morris."¹ The requestor also seeks "a copy of both the new and old rules pertaining to supervisor guidelines including a copy of Rule 465.18." You do not claim that the requested copy of new and old rules pertaining to supervisor guidelines is excepted from required public disclosure.² We therefore assume that the board has

¹In his letter requesting a decision of the attorney general regarding this information, Mr. Chisum stated that the board had received two requests, one dated May 5, 1994, and the other dated May 10, 1994, for "all documents regarding the Board's investigation of complaints filed against Jonathan Morris, Ph.D." We received a copy of only the May 5, 1994, letter. *But see* Open Records Decision No. 150 (1977) at 2 (determining that governmental body's failure to submit copy of request letter results in presumption that requested information is public). We therefore must assume that Mr. Chisum's characterization of the information the May 10, 1994, letter requests is accurate.

²Furthermore, we note that section 552.022(9), (10) of the Government Code specifically makes public rules of procedure, substantive rules of general applicability, and agency statements of general policy or interpretations of general applicability.

released or will release to the requestor these rules. You believe that the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). We understand that the information relates to a pending quasi-judicial proceeding, and we therefore conclude that section 552.103(a) authorizes the board to withhold the requested information.

In reaching this conclusion, however, we assume that the opposing party to the proceeding previously has not accessed the records at issue; absent special circumstances, once all parties to the litigation have obtained particular information, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or accessed any of the requested information, the board cannot now justify withholding that information from the requestor pursuant to section 552.103(a). We also note that section 552.103(a) no longer applies once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).³

Upon reviewing the requested information, we believe that some of the requested information may be confidential pursuant to statute, *e.g.*, 26 U.S.C. § 6103 (pertaining to income tax information); Health and Safety Code § 611.002 (making confidential certain mental health records). Other portions of the requested information may be confidential under the common law. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (establishing two-pronged test to determine whether particular information is confidential under common law). Should the requestor seek this information when section 552.103(a) is no longer applicable, we urge the board to exercise caution before releasing the information. *See Gov't Code* § 552.352 (providing penalties for improper release of confidential information).

³The board also has cited sections 552.101 and 552.108 in support of its contention that the requested information is excepted from required public disclosure. Because we conclude that section 552.103 resolves this request, we need not now consider other exceptions to required public disclosure. We note, however, that the board specifically relies upon the attorney-client privilege, which it believes is incorporated into section 552.101. Although, prior to 1990, this office often cited the statutory predecessor to section 552.101 of the Government Code to except from disclosure information within the attorney-client privilege, section 552.107 more specifically incorporates the privilege. *See* Open Records Decision No. 574 (1990) at 2. Section 552.107(1) excepts from required public disclosure "information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 26361

Enclosures: Submitted documents

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