



April 26, 2000

Ms. Amy F. Swann
General Counsel
Texas State Board of Examiners of Psychologists
333 Guadalupe, Suite 2-450
Austin, Texas 78701

OR2000-1630

Dear Ms. Swann:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 134814.

The State Board of Examiners of Psychologists (the "board") received a request for information related to the requestor's complaint against a licensee of the board. You seek to withhold the responsive information under sections 552.101 and 552.107 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. Section 501.205(a) of the Occupation Code provides, in relevant part, that "except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information compiled by the board in connection with the complaint and investigation are not subject to . . . disclosure under Chapter 552, Government Code." Subsection (b) of section 501.205 provides in relevant part:

(b)A complaint or investigation subject to subsection (a) and all information and materials compiled by the board in connection with the complaint *may* be disclosed to:

.....

(2) a party to a disciplinary action against the license holder or that party's designated representative[.]

Emphasis added.

In our opinion, it is clear that the information you submitted as responsive to the request is protected from *public* disclosure by section 501.205(a). You ask several questions concerning the application of subsection (b)(2).

First, you ask whether, given the use of the term “may” in subsection (b), the release of complaint and investigation information to a “party to a disciplinary action” under subsection (b)(2) is mandatory or permissive. In our opinion, the use of the term “may” in subsection (b) indicates that release of complaint and investigation information under section (b)(2) is permissive.¹ You also ask, if release under subsection (b) is permissive, “[w]ould the board’s decision to release information on a limited, case-by case basis violate Section 552.223 [of the Public Information Act], which requires that all requests for information be treated uniformly?” In our opinion, subsection (a) makes it clear that the kinds of records at issue are not subject to *public* disclosure under the Public Information Act, chapter 552 of the Government Code. Therefore, the provisions of section 552.223, for uniform treatment of requests, are not applicable to a release of information under subsection (b) of section 501.205. Rather, access to this information is governed by the release provisions of section 501.205. Third, you ask whether a discretionary release of information under subsection (b)(2) of section 501.205 “would result in the Board’s waiver of the right to refuse disclosure to subsequent requestors.” We find no specific provision of law which would operate to effect a waiver of the board’s right to withhold information under the circumstances you describe. We note that section 552.007(b) of the Public Information Act provides that, if a governmental body voluntarily releases information to the public, such information “must be made available to any person.” But, again, it is our opinion that, per subsection (a) of section 501.205, a release under subsection (b) is not subject to the public release provisions of the Public Information Act.

We caution, however, that we cannot anticipate all fact situations which may arise *vis a vis* differential treatment of persons in the board’s discretionary release of information under subsection (b) of section 501.205. For example, there may be instances where unreasonable discrimination among individuals in the release of information under subsection (b) could be subject to judicial remedy. The board may wish to develop reasonable policies in this regard in cooperation with the attorneys in the Office of the Attorney General who represent it.

To summarize, section 501.205(a) prohibits *public* release of the requested information. Subsection (b)(2) permits the board, at its discretion, either to withhold complaint and investigation information from, or to release it to, an individual where the latter is a party to the related disciplinary proceeding. Since we have concluded that the board may withhold the requested information under section 501.205(a), we do not address your claim for withholding under section 552.107 of the act.²

¹Please note that, reading the provisions as a whole, we believe that release under some of the other provisions of subsection (b) is mandatory. For example, subsection (b)(3) provides for release of information to “a law enforcement agency if required by law.”

²We also need not, in view of our conclusion under section 501.205, address your claim that the request is “repetitive and redundant” under section 552.232 of the act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

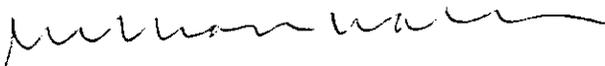
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 134814

Encl. Submitted documents

cc: Ms. Brenda Bailey Andrews
8220 Hwy 71 West #119
Austin, Texas 78735
(w/o enclosures)