



July 31, 2000

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

OR2000-2875

Dear Ms. Swann:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137928.

The Texas State Board of Examiners of Psychologists (the “board”) received a request for information relating to a specified individual, including his professional file and records pertaining to disciplinary actions filed against him. You inform us that the board has released the relevant professional file and other information to the requestor. You claim that other responsive information, relating to complaint investigation number T.S.B.E.P. 88-55-5458, is excepted from disclosure under section 552.101 of the Government Code. You have submitted representative samples of the information that the board seeks to withhold.¹ We have considered the exception you claim and have reviewed the information you submitted.

You claim that the submitted information is protected from disclosure under section 552.101 in conjunction with section 501.205 of the Occupations Code.² Chapter 501 of the Occupations Code codifies the Psychologists’ Licensing Act. *See* Occ. Code § 501.001. Section 501.205(a) provides, in relevant part, that “except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by the board in connection with the complaint and investigation are not subject to . . . disclosure under

¹This letter ruling assumes that the representative sample of responsive information that you submitted is truly representative of the requested information as a whole. This letter ruling does not reach, and therefore does not authorize you to withhold, any other requested information that is substantially different from the information that was submitted. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Statutory confidentiality under section 552.101 requires express language making certain information confidential or providing that it shall not be released to the public. *See* Open Records Decision No. 478 at 2 (1987).

Chapter 552, Government Code[.]” Occ. Code § 501.205(a)(1). Subsection (b) of section 501.205 provides as follows:

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:

(1) the board and board employees or agents involved in license holder discipline;

(2) a party to a disciplinary action against the license holder or that party’s designated representative;

(3) a law enforcement agency if required by law;

(4) a governmental agency, if:

(A) the disclosure is required or permitted by law; and

(B) the agency obtaining the disclosure protects the identity of any patient whose records are examined; or

(5) a legislative committee or committee staff directed to make an inquiry regarding state hospitals or schools, by either house of the legislature, the presiding officer of either house of the legislature, or the chairman of the legislative committee if the information or records that identify a patient or client are not released for any purpose unless the patient consents and the records are created by the state hospital or school or its employees.

Occ. Code § 501.205(b) (emphasis added).

In this instance, you inform us that the requestor is not a party to the complaint to which the information in question pertains. You assert that, “[b]ecause the requestor does not appear to fall into one of the five exceptions . . . the information contained in a complaint investigation file cannot be released as a matter of law.” You seek clarification concerning disclosure of the submitted information under section 501.205(b) to a non-party to a disciplinary complaint. We believe that section 501.205(a) clearly protects from public disclosure information and materials that the board compiles in connection with complaints lodged against license holders and the board’s investigations of such complaints. We further believe that section 501.205 permits the board to release such information only to the persons and entities and under the circumstances that are delineated by section 501.205(b). Based on your representation that the requestor is not within the ambit of section 501.205(b) and our review of the submitted information, we conclude that the information that the board seeks to withhold is excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 501.205 of the Occupations Code. Therefore, the information in question must not be released.

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.

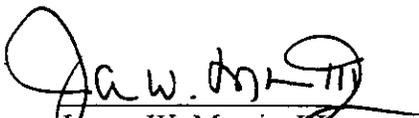
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 137928

Encl. Submitted documents

cc: Mr. Patrick Nagy
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(w/o enclosures)