



December 20, 2000

Ms. Michele L. Shackelford
General Counsel
Texas State Board of Medical Examiner
P.O. Box 2018
Austin, Texas 78768-2018

OR2000-4802

Dear Ms. Shackelford:

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# 142466.

The State Board of Medical Examiners (the "board") received a request for thirteen categories of information. You request a decision from this office regarding only two of the requested categories of information, stating that you have released the remainder of the responsive information to the requestor. With respect to the request for all schedules, agendas, and calendars relating to a named employee's travel, public speaking, and meetings, you claim that certain information is excepted from disclosure under section 552.101 of the Government Code. With respect to the request for the same employee's statements of earnings, you claim that certain information contained therein is excepted under sections 552.101, 552.024, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information and representative samples of information.¹

Section 552.101 of the Government Code excepts from disclosure information that is "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim that certain highlighted information in the requested calendars reveals the names of medical license applicants who were the subjects of investigations by the board. Under section 164.007(c) of the Occupations Code,

¹In reaching our conclusion here, we assume that the "representative samples" of the statements of earnings submitted to this office are truly representative of the requested statements of earnings as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder.

Based on your contention that the pink highlighted information reveals the names of individual applicants subject to investigation by the board and the dates and times they were scheduled to meet with the executive director, we find that the pink highlighted names contained in the requested calendars constitute investigative information in the possession of the board or its employees relating to an application for license. Therefore, the information is confidential under section 164.007 of the Occupations Code and is excepted from public disclosure under section 552.101 of the Government Code.

You also claim that the “calendars contain entries relating to staff and their families’ private schedules and events which are of no legitimate concern to the public.” We note that a public official’s or employee’s calendar, including personal entries, may be public information subject to the act. Open Records Decision No. 635 at 4 (1995). When the calendar is subject to the act, personal entries in the calendars may be withheld only if specifically excepted under a provision of the act. Section 552.101 of the Government Code encompasses information considered confidential under the common law right to privacy. Under the common law right to privacy, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). Although you argue that there is no legitimate public interest in the disclosure of the personal calendar entries of board employees, you fail to argue, and we are unable to discern from the face of the information, that the information is highly intimate or embarrassing. Therefore, you may not withhold the yellow highlighted material contained in the submitted calendars pursuant to the common law right to privacy.

Next, you argue that certain information contained within the requested statements of earnings is excepted from disclosure under common law privacy because it reveals personal financial information of an employee. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, a public employee’s allocation of

his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common law right of privacy. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1992) (deferred compensation plan). Likewise, an employee's allocation of his salary toward membership dues in a union is confidential. However, the salary of a public employee and an employee's participation in an insurance program funded wholly or partially by the state are not excepted from disclosure. Open Records Decision Nos. 600 (1992), 342 (1982). Therefore, only the details of payroll-related transactions that were funded entirely by the employee qualify as personal financial information excepted from disclosure under section 552.101 and common law privacy.

Here, the statements of earnings contain references to the employee's payroll deductions. We are unable to determine whether these payroll deductions are compulsory or whether they are the employee's personal financial choice. Therefore, to the extent that the deductions are mandatory, the information must be released. However, if the employee has voluntarily chosen to have these amounts deducted from his paycheck, this information is protected from disclosure based on a right of privacy.

Finally, you claim that certain information contained within the requested statements of earnings is excepted from public disclosure under sections 552.024 and 552.117 of the Government Code. Section 552.117 excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee, as well as information revealing whether the employee has family members. Section 552.117 requires you to withhold this information if a current or former employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Here, you have submitted a document indicating that the employee, whose records are the subject of the current request for information, requested that his home address, telephone number, social security number, and family member information not be released to the public. Furthermore, the document indicates the employee made this request for confidentiality well before the current request for information. Therefore, the board must withhold the home address, home telephone number, social security number, and family member information of the employee contained within the requested statements of earnings under section 552.117 of the Government Code. We have marked this information.

In summary, with respect to the requested calendars and schedules, you must withhold the names of medical license applicants who were the subjects of investigations by the board; however, you must release the remainder of the documents. With respect to the statements of earnings, you must withhold certain personal financial information, and home address, telephone number, social security number, and family member information.

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).

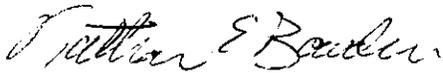
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB\er

Ref: ID# 142466

Encl: Submitted documents

cc: Mr. John S. Teer
4909 Beverly Skyline
Austin, Texas 78731
(w/o enclosures)