



September 17, 2001

Mr. O. C. Robbins  
Executive Director  
Texas Funeral Commission  
510 South Congress, Suite 206  
Austin, Texas 78701-1716

OR2001-4138

Dear Mr. Robbins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152061.

The Texas Funeral Commission (the "commission") received a request for a copy of all reports produced by the commission pertaining to a specified complaint. You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. You claim that the submitted information is confidential pursuant to section 6D of article 4582b of Vernon's Texas Civil Statutes. In 1999, the Seventy-sixth Legislature amended section 6D of article 4582b of Vernon's Texas Civil Statutes, relating to the disclosure of complaint investigation files compiled by the commission, and provided that "[t]he information file is public information, except for information relating to a complaint that has not reached final disposition." *See* Act of May 24, 1999, 76th Leg., R.S. ch. 1476, § 22, 1999 Tex. Sess. Laws 5053, 5064. Although the Seventy-sixth Legislature also repealed section 6D of article 4582b of Vernon's Texas Civil Statutes and codified it at section 651.203(a) of the Occupations Code, the legislature did not intend a substantive change of the law but merely a re-codification of existing law. *See id.* Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. *See* Gov't Code § 311.031(c). However, when the Legislature codified section 6D of article 4582b of Vernon's Texas Civil Statutes at section 651.203(a) of the Occupations Code, it codified it

as follows: “[i]nformation in a file maintained under this Section, other than information obtained by the Commission after investigating the complaint, is public information. Information obtained after investigating the complaint is not public information.” *See id.* Thus, although the amendment to section 6D of article 4582b of Vernon’s Texas Civil Statutes was to be given effect as part of the code provision, it appears that such effect was limited by the codification in section 651.203(b) which contained language that was different from the amended version of section 6D of article 4582b of Vernon’s Texas Civil Statutes.

However, the Seventy-seventh Legislature appears to have remedied this apparent conflict when it amended section 651.203(b) of the Occupations Code effective September 1, 2001 to conform to section 6D of article 4582b of Vernon’s Texas Civil Statutes and to provide that “[i]nformation in a file maintained under this Section, other than information relating to a complaint that has not reached final disposition, is public information.” *See Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 14.378 (codified at § 651.203, Occ. Code).* Thus, as of September 1, 2001, it is clear under section 651.203(b) of the Occupations Code that all information in a complaint file maintained by the commission, other than information relating to a complaint that has not reached final disposition, is public information. You state that the complaint that is the subject of this request for information has not yet reached final disposition and that it is pending resolution by an informal conference. Based on your arguments and our review of the submitted information, we agree that the submitted information which constitutes the complaint file in this matter is confidential under section 651.203(b) of the Occupations Code and, thus, is excepted from disclosure pursuant to section 552.101 of the Government Code. Accordingly, you must withhold the submitted information from the requestor.

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

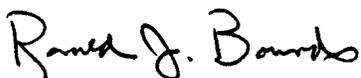
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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).

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 152061

Enc. Submitted documents

cc: Mr. David B. Fugler  
The Roth Law Firm  
P.O. Box 876  
Marshall, Texas 75670  
(w/o enclosures)