



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2003

Mr. Brett Norbraten  
General Counsel  
Texas State Board of Examiners of Psychologists  
333 Guadalupe, Suite 2-450  
Austin, Texas 78701

OR2003-6711

Dear Mr. Norbraten:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189106.

The Texas State Board of Examiners of Psychologists (the "board") received a request for "the names, addresses and phone numbers of any and all individuals and/or practices that are now under investigation for any violation of their Occupations, Code or Act where the final decision to conduct an investigation of them has been made by your agency." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 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." This section encompasses information made confidential by statutes such as section 501.205 of the Occupations Code. Chapter 501 of the Occupations Code codifies the Psychologists' Licensing Act. *See* Occ. Code §§ 501.001, *et seq.* 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 Chapter 552, Government Code[.]” Subsection (b) of section 501.205 provides as follows:

(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:

(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.

From our review of the submitted information, we conclude that the information falls within the ambit of section 501.205 of the Occupations Code. We find that the requestor does not fall into any of the five exceptions enumerated in that statute. Therefore, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 501.205 of the Occupations Code.

With regards to future requests to the State Board of Examiners of Psychologists for information compiled by the board in connection with a complaint and investigation of a license holder, where the requestor does not fall into any of the five exceptions enumerated in section 501.205(b) of the Occupations Code, you may consider this ruling to be a previous determination under section 552.301(a) of the Government Code. This previous

determination applies only to the information described above. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, facts and circumstances do not change so as to no longer support the findings set forth above, the board need not ask for a decision from this office again with respect to this type of information requested of the board.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 189106

Enc. Submitted documents

c: Mr. James B. Lummus  
ProAdvocate Group  
2591 Dallas Parkway, Suite 300-23  
Frisco, Texas 75034  
(w/o enclosures)