

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2003

Ms. Michele Shackelford  
General Counsel  
Texas State Board of Physician Assistant Examiners  
P.O. Box 2018  
Austin, Texas 78768-2018

OR2003-6941

Dear Ms. Shackelford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188542.

The Texas State Board of Physician Assistant Examiners (the "board") received a request for the licensure file of a named physician's assistant. 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Section 204.254 of the Occupations Code, which is titled "Confidentiality of Investigative Information," provides:

A complaint, adverse report, investigation file, other report, or other investigative information in the possession of or received or gathered by the physician assistant board or a board employee or agent relating to a license holder, a license application, 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 any person other than the board or a board employee or agent involved in license holder discipline.

Occ. Code § 204.254. As its title indicates, section 204.254 applies to investigatory records gathered by the board. The submitted records consist solely of licensure information

concerning this individual. Because you have failed to explain how the licensure information relates to an investigation contemplated by section 204.254, we find that it is not confidential under this provision and it may not be withheld pursuant to section 552.101 on this basis.

We note, however, that certain information within the submitted licensure materials is confidential and must be withheld from public disclosure. Section 56.001 of the Occupations Code makes “[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency . . . confidential and not subject to disclosure under Chapter 552, Government Code.” The board must withhold the licensee’s social security number pursuant to section 552.101 of the Government Code.

The submitted licensure materials also contain fingerprint information that is subject to sections 559.001, 559.002, and 559.003 of the Government Code. They provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter

- (1) “Biometric identifier” means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) “Governmental body” has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
  - (A) the individual consents to the disclosure;
  - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
  - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or

more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information. Therefore, the board must withhold the licensee's fingerprints under section 552.101 in conjunction with section 559.003 of the Government Code.

Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990).* Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Therefore, assuming that the board has CHRI about the licensee in its possession and it falls within the ambit of these state and federal regulations, the board must withhold the CHRI from the requestor under section 552.101.

Finally, section 552.101 also incorporates common law privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public.. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also determined that common law

privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/ mental distress. Open Records Decision No. 343 (1982).

Having reviewed the submitted information, we conclude that some of it is both highly intimate or embarrassing and of no legitimate public interest. The board must withhold this information, which we have marked, pursuant to section 552.101 and common law privacy.

In summary, the licensee's social security number must be withheld pursuant to section 552.101 in conjunction with section 56.001. We have marked fingerprint information that the board must withhold under section 552.101 and chapter 559 of the Government Code. To the extent that the board has any CHRI concerning this licensee, such information must be withheld pursuant to section 552.101 and the relevant state and federal laws. The information we have marked as coming within the common law right to privacy must also be withheld pursuant to section 552.101. All other submitted information must be released.

Although you request a previous determination regarding this type of information, we decline to issue one at this time. Accordingly, 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

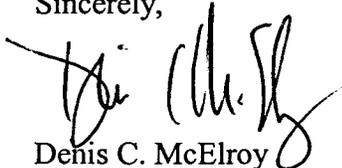
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 188542

Enc. Submitted documents

c: Ms. Shellie Weidemann  
Foliart, Huff, Ottaway & Bottom  
120 N. Robinson, 20<sup>th</sup> Floor  
Oklahoma City, Oklahoma 73102  
(w/o enclosures)

CAUSE NO. GN304321

TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS,  
Plaintiff,  
V.  
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS,  
Defendant.

§ IN THE DISTRICT COURT OF  
§  
§  
§  
§ TRAVIS COUNTY, TEXAS  
§  
§  
§ 53<sup>RD</sup> JUDICIAL DISTRICT

Filed in the District Court  
of Travis County, Texas  
SEP 14 2006  
9:00 AM  
Luis J. Gueez-Mendoza, Clerk

**AGREED FINAL JUDGMENT**

On this date, Plaintiff Texas State Board of Physician Assistant Examiners and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552, by which Plaintiff seeks relief from compliance with Letter Ruling OR2003-6941. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestor, Shellie Weidemann, was sent reasonable notice of this setting and of the parties' agreement that the Board must withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, investigative information in the possession of, or received or gathered by the Texas State Board of Physician Assistant Examiners, in connection with an application for licensure, regarding Carl F. Fasser, P.A., is excepted from disclosure by Tex. Gov't Code § 552.101, in conjunction with Tex. Occ. Code § 204.254.

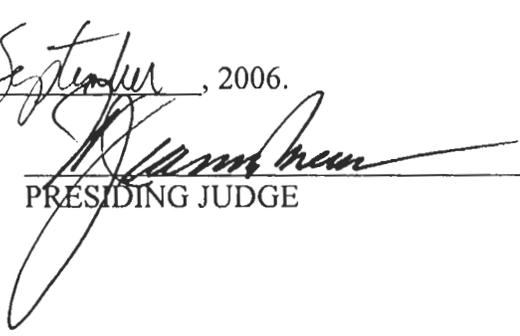
2. The Texas State Board of Physician Assistant Examiners shall withhold from the requestor the information at issue.

3. All costs of court are taxed against the parties incurring the same;

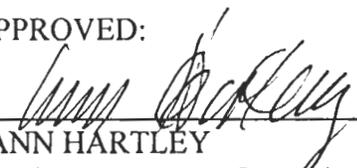
4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

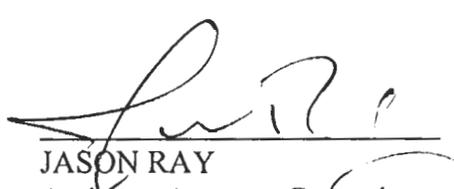
SIGNED this the 14 day of September, 2006.

  
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PRESIDING JUDGE

APPROVED:

  
\_\_\_\_\_  
ANN HARTLEY

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