



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2003

Ms. Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
1917 IH-35 South
Austin, Texas 78741

OR2003-7571

Dear Ms. Hsu:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189027.

The Texas Board of Professional Engineers (the "board") received a request for the names, addresses, and telephone numbers of individuals and firms under investigation for a violation of the Texas Engineering Practice Act, chapter 1001 of the Occupations Code. You argue that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1001.252 of the Occupations Code and a board rule. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 1001.252 of the Occupations Code provides:

- (a) The board shall adopt rules that permit the board to receive and investigate a confidential complaint against a license holder or other person

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records 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.

who may have violated this chapter. The board shall maintain the confidentiality of the complaint during the investigation.

...

(k) Except as provided by Subsection (l), a complaint filed with the board is public information.

(l) For any frivolous complaint, the license holder's name and other personal information on the complaint is not public information and must be redacted.

(m) In this section, "frivolous complaint" means a complaint that the executive director and investigator, with board approval, determined:

(1) was made for the purpose of harassment; and

(2) does not demonstrate harm to any person.

Act of June 2, 2003, 78th Leg., R.S., ch. 1168, § 20, 2003 Tex. Sess. Law Serv. 3307, 3314 (Vernon) (to be codified as an amendment to Occ. Code § 1001.252). A board rule pertaining to complaints provides in part:

(d) The board will receive and investigate confidential complaints against license holders or any other person who may have violated [the Texas Engineering Practice] Act. The board shall maintain the confidentiality of the complaint during the investigation of the complaint. The investigation phase of the complaint shall be considered complete for the purposes of maintaining confidentiality when formal charges have been filed.

22 T.A.C. § 131.171(d). Section 1001.252(a) requires the board to maintain the confidentiality of complaint information during the investigation of the complaint. An investigation is not considered complete under board rule section 131.171(d) until formal charges have been filed. On the other hand, section 1001.252(k) deems a complaint filed with the board to be public information that must be released, subject only to subsection (l) of section 1001.252 regarding "frivolous complaints." Subsections (a) and (k) appear to conflict, and we have found no legislative history that sheds light on this apparent conflict. However, in our view, subsection (a) is not in irreconcilable conflict with subsection (k), and we are obliged to adopt a reading of these subsections that harmonizes them, giving each full effect. *See* Gov't Code §§ 311.021(a) (presumption that entire statute is intended to be effective), .026(a) (expressing preference where provisions conflict for giving effect to both). In this instance, subsections (a) and (k) can be harmonized by holding that complaint information is confidential under subsection (a) until the investigation is considered complete under board rule section 131.171(d), and upon completion of the investigation, the complaint must be released to the public under subsection (k), subject only to subsection (l) of

section 1001.252. This reading is further supported by subsections (l) and (m), which preserve the confidentiality of personal information about a license holder contained in a complaint that the executive director, an investigator, and the board determine to be “frivolous.”

The documents responsive to the request for information consist of complaint information and investigative files. You inform us that these documents relate to pending investigations that are not considered complete under board rule section 131.171(d). Therefore, we agree that at this time the board must withhold the responsive documents from disclosure under section 552.101 of the Government Code in conjunction with section 1001.252(a) of the Occupations Code.

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 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,



Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 189027

Enc: Submitted documents

c: Mr. James B. Lummus
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(w/o enclosures)