



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2004

Ms. Laura Shackelford
Assistant General Counsel
State Bar of Texas
P. O. Box 12487
Austin, Texas 78711-2487

OR2004-3132

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# 199783.

The State Bar of Texas (the "bar") received a request for information "showing the titles and dates of any and all CLE courses taken in the previous 2 years" by eighty-five specified attorneys. You claim that the requested 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 representative sample document.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Article XII, section 12 of the Texas State Bar Rules provides that:

The files, records and proceedings of the Committee [on Minimum Continuing Legal Education], as they relate to the compliance or noncompliance of any member with the requirements of this Article, shall be

¹ We assume that the representative sample document 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.

confidential and shall not be disclosed except upon consent of the member affected or as directed in the course of judicial proceeding by a court of competent jurisdiction.

State Bar Rules, Gov't Code Ann., tit. 2, subtit. G app. A, art. 12, § 12 (Vernon 2002). You indicate that the submitted document is a record of the Committee on Minimum Continuing Legal Education ("MCLE") that relates to the compliance or noncompliance of bar members. You inform this office that the bar members to whom the requested records pertain have not consented to the release of these records and that the bar has not been directed to release these records in the course of judicial proceedings by a court of competent jurisdiction. Thus, we agree that the submitted information is made confidential by section 12 of article 12 of the Texas State Bar Rules. *See State Bar v. Edwards*, 646 S.W.2d 543, 544 (Tex.App.—Houston [1st Dist.] 1982, writ ref'd n.r.e.) (power to impose any punishment in bar discipline cases derived from State Bar Rules); *see also Brown v. Linkenhoger*, 153 S.W.2d 342 (Tex.Civ.App.—El Paso 1941, writ ref'd w.o.m.) (power of Supreme Court to make rules, when exercised, is exercise of legislative power under direct grant by constitution, and such rules when promulgated and established have all effect of statutes). Accordingly, we conclude that the bar must withhold the submitted information pursuant to section 552.101 of the Government Code.

You also request that this office issue a previous determination allowing the bar to withhold requested "MCLE records" maintained by the bar under article 12, section 12 of the bar rules. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) for such information. *See Gov't Code § 552.301(a), (f); see also Open Records Decision No. 673 (2001)*. This previous determination allows the bar to withhold the document titled "MCLE Transcript Report" pertaining to attorney members of the bar, except when the member affected has consented to release or when release is directed in the course of a judicial proceeding by a court of competent jurisdiction. Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the bar need not ask for a decision from this office again with respect to the document titled "MCLE Transcript Report" when this information has been requested of the bar under Chapter 552 of the Government Code. *See id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. 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 of 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 199783

Enc. Submitted document

c: Mr. Robert Cowie
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(w/o enclosures)