



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2004

Ms. Maureen E. Ray
Special Assist Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487

OR2004-5435

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 204410.

The State Bar of Texas (the "state bar") received a request for documents supporting conclusions made by the investigatory committee in matter No. H0110316826. You contend that the requested information is not subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code, and Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted information.

We first consider your argument that the submitted information is not subject to the Act. Section 81.033(a) provides that:

[a]ll records of the state bar, except for records pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure, and records pertaining to the Texas Board of Legal Specialization, are subject to Chapter 552 [of the Government Code].

Gov't Code § 81.033(a). You also assert that the information at issue is confidential and privileged under rules 2.15 and 15.10 of the Texas Rules of Disciplinary Procedure.¹ Thus, you argue that pursuant to section 81.033(a), the submitted information is not subject to the Act.

Rule 2.15 of the Texas Rules of Disciplinary Procedure provides as follows:

All information, proceedings, hearing transcripts, statements, and any other information coming to the attention of the investigatory panel of the Committee must remain confidential and may not be disclosed to any person or entity (except the Chief Disciplinary Counsel) unless disclosure is ordered by the court. If there is a finding of Just Cause and any Sanction *other than a private reprimand* (which may include restitution and payment of Attorneys' Fees) imposed by agreement of the Respondent, all of the information, proceedings, hearing transcripts, documents, statements, and other information coming to the attention of the investigatory panel shall be, upon proper request, made public. Notwithstanding anything herein to the contrary, any action taken by a Committee to refer a matter to the Board of Disciplinary Appeals for attorney Disability screening and determination must remain confidential.

TEX. R. DISCIPLINARY P. 2.15, *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G, App. A-1 (emphasis added). Rule 15.10 of the Texas Rules of Disciplinary Procedure provides as follows:

All communications, written and oral, and all other materials and statements to or from the Commission [for Lawyer Discipline], Chief Disciplinary Counsel, the Complainant, the Respondent, and others directly involved in the filing, screening, investigation, and disposition of Inquiries and Complaints are absolutely privileged.

TEX. R. DISCIPLINARY P. 15.10. We note that the phrase "absolutely privileged" in rule 15.10 is synonymous with "confidential" in section 81.033(a). *See, e.g.*, Attorney General Opinion JM-1235 (1990); *see also* Open Records Decision Nos. 384 at 2 (1983), 375 at 2 (1983).

You state that "[o]nly in those circumstances in which there is a public sanction against an attorney may the Chief Disciplinary Counsel [of the state bar] provide information related to the disciplinary proceeding." You assert that the submitted information does not relate to

¹We note that the rules of the state bar have the same effect as statutes. *See Board of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex. 1994); *see also State Bar v. Wolfe*, 801 S.W.2d 202, 203 (Tex. App.—Houston [1st Dist.] 1990, no writ); *State Bar v. Edwards*, 646 S.W.2d 543, 544 (Tex. App.—Houston [1st Dist.] 1982, writ ref'd n.r.e.).

such an instance and is therefore confidential under rule 2.15 and absolutely privileged under rule 15.10. Based on your representations and our review of the submitted information, we find that all of the submitted information is confidential under either rule 2.15 or 15.10. We therefore conclude that, pursuant to section 81.033(a) of the Government Code, the submitted information is not subject to the Act and need not be released to the requestor.²

Finally, you ask this office to issue a previous determination that would authorize the state bar to withhold information in investigatory files in which there has been no sanction without the necessity of again requesting an attorney general decision under section 552.301 of the Act. We decline to issue such a previous determination 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).

²Because we dispose of this issue under section 81.033(a), we do not address your claims under the Act.

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/WDF/sdk

Ref: ID# 204410

Enc. Submitted documents

c: Mr. Michael Easton
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(w/o enclosures)